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Presidential Documents

Title 3—

The President

Memorandum of August 1, 2016

Delegation of Functions and Authorities Under the Protect and Preserve International Cultural Property Act

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, the functions and authorities conferred upon the President by the Protect and Preserve International Cultural Property Act (Public Law 114–151, 130 Stat. 369) are hereby delegated to the Secretary of State. In the performance of such functions, the Secretary of State shall consult the Secretaries of Homeland Security and the Treasury, and the heads of other departments and agencies, as appropriate.

You are authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
Washington, August 1, 2016

[FR Doc. 2016–19821
Filed 8–17–16; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Presidential Determination No. 2016–09 of August 4, 2016

Continuation of U.S. Drug Interdiction Assistance to the Government of Colombia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. 2291–4), I hereby certify, with respect to Colombia, that: (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary, because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) Colombia has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the *Federal Register* and to notify the Congress of this determination.

THE WHITE HOUSE,
Washington, August 4, 2016

[FR Doc. 2016–19832
Filed 8–17–16; 8:45 am]
Billing code 4710–10–P

Presidential Documents

Memorandum of August 5, 2016

Delegation of Authority Under Section 614(a)(1) of the Foreign Assistance Act of 1961

Memorandum for the Secretary of State

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, subject to fulfilling the requirement of section 614(a)(3) of the Foreign Assistance Act of 1961 (FAA), I hereby delegate to you the authority under section 614(a)(1) of the FAA to determine whether it is important to the security interests of the United States to furnish up to $28,970,312 of Fiscal Year 2015 Economic Support Fund resources without regard to any other provision of law within the purview of section 614(a)(1) of the FAA, in order to provide assistance for stabilization programs in Syria.

You are authorized and directed to publish this memorandum in the *Federal Register.*

THE WHITE HOUSE,
Washington, August 5, 2016

[FR Doc. 2016–19837
Filed 8–17–16; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

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DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2009–BT–TP–0004]

RIN 1904–AB94

Energy Conservation Program: Test Procedures for Central Air Conditioners and Heat Pumps; Correction

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule; technical correction.

SUMMARY: On June 8, 2016, the U.S. Department of Energy (DOE) published a final rule in the **Federal Register** that amended the test procedures for central air conditioners and heat pumps. This final rule corrects multiple editorial errors in that final rule.

DATES: *Effective Date:* August 18, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov.*

Ms. Johanna Jochum, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Johanna.Jochum@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 8, 2016, DOE's Office of Energy Efficiency and Renewable Energy published a test procedure final rule in the **Federal Register** titled, "Test Procedures for Central Air Conditioners and Heat Pumps" ("June 2016 final rule"). 81 FR 36992. Since the publication of that final rule, it has come to DOE's attention that, due to a technical oversight, certain portions of the regulatory text adopted in the June 2016 final rule for 10 CFR part 429 and appendix M to subpart B of 10 CFR part 430 ("appendix M") contained editorial errors.

As part of that final rule, DOE amended 10 CFR 429.16, which addresses certification of central air conditioners and heat pumps, and 10 CFR 429.70, which addresses alternate efficiency determination methods. This correction addresses editorial errors in § 429.16(a)(1), (d)(1), (d)(2), and (e)(4). Specifically, at § 429.16(a)(1), DOE included a cross reference to paragraph (c)(2) that should have referred to paragraph (b)(2)(i). In § 429.16(d)(1) and (2), DOE mistakenly transposed the words "less" and "greater." At § 429.16(e)(4), DOE erroneously referred to cubic feet per minute (cfm) instead of cubic feet per minute of standard air (scfm). At § 429.16(e)(4)(viii), DOE failed to remove regulatory text associated with changes to the test procedure for variable speed heat pumps not adopted in the June 2016 final rule that had been proposed on November 9, 2015 in a supplementary notice of proposed rulemaking ("November 2015 SNOPR"). 80 FR 69278. In order to remedy these errors, DOE is issuing this final rule correction to revise the text in these sections.

In addition, the June 2016 final rule revised appendix M to subpart B of 10 CFR part 430 ("appendix M"), which specifies the "Uniform Test Method for the Measurement the Energy Consumption of Central Air Conditioners and Heat Pumps." This correction also addresses several editorial errors in appendix M.

In section 3.11.1 of appendix M, "If using the outdoor air enthalpy method as the secondary test method," DOE erroneously numbered two subsections with the number "3.11.1.1." The second of these two is renumbered to "3.11.1.2."

In section 4.1 of appendix M, "Seasonal Energy Efficiency Ratio (SEER) Calculations," DOE erroneously numbered subsection 4.1.3 as "4.1.2.3," which propagated errors in numbering from that point through the end of section 4.1 and created erroneous cross-references to these sections. Section 4.1.2.3 is renumbered as section "4.1.3," and the following section numbers through the end of section 4.1 are renumbered accordingly. Additionally, cross-references to the renumbered sections are revised.

Sections 2.11 and 3.19 of appendix M contain errors in the tolerance allowed between temperature measurements. The preamble to the June 2016 final rule states that the maximum allowable temperature difference is 2.0 °F and that it applies to the average measurements for the test period. 81 FR 36991, 37028 (June 8, 2016). In section 2.11, DOE erroneously referred to "maximum difference between readings" rather than adding the clarification discussed in the preamble that "readings" referred to the average temperatures measured during the test period. In section 3.1.9, DOE similarly failed to include the clarifying information on the tolerance and erroneously provided a tolerance of 1.5 °F rather than 2.0 °F. DOE is correcting section 2.11 accordingly and correcting 3.1.9 to refer directly to section 2.11 rather than correcting the provided tolerance.

Tables 8, 9, 15, 16, and 17 of appendix M contained various errors in testing tolerances for external resistance to airflow, airflow nozzle pressure difference, and electric voltage. In the preamble of the June 2016 Final Rule, DOE explained its intention to maintain the external resistance to airflow tolerance at 0.05 inches of water, to maintain the airflow nozzle pressure difference tolerance at 2.0%, and to maintain the electric voltage tolerance at 2.0%. 81 FR 36991, 37036 (June 8, 2016). However, this was not reflected in tables 8, 9, 15, 16 and 17 of appendix M, and the tables are revised to reflect these corrections.

In section 3.13.1.d of appendix M, $P2_x$ was erroneously printed instead of P_x in two instances. This section provides instructions for measurement of the indoor unit low voltage power P_x, which is later subtracted from the measurement of heating season total off mode power ($P2_x$) for coil-only split systems and for blower coil split systems for which a furnace or a modular blower is the designated air mover. Instances of $P2_x$ in section 3.13.1.d of appendix M are revised to P_x.

Finally, many of the instructions in the final rule that indicate that a default cyclic degradation coefficient is to be used if the tests to determine this value are not conducted, but erroneously did not specify that the default value is to be used if the value determined using the test exceeded the default value. 81 FR 36991, 37033 (June 8, 2016). DOE intended that the default value is to be used if the value determined using the test exceeds the default value for the cyclic degradation coefficient, and is correcting this omission in this final rule correction.

II. Need for Correction

As published, the adopted test procedure text may potentially result in confusion regarding how to correctly conduct DOE's central air conditioners and heat pumps test procedure.

Because this final rule would simply correct errors in the regulatory text without making substantive changes to the test procedures, the changes addressed in this document are technical in nature. Accordingly, DOE finds that there is good cause under 5 U.S.C. 553(b)(B) to not issue a separate notice to solicit public comment on the changes contained in this document. Issuing a separate notice to solicit public comment would be impracticable, unnecessary, and contrary to the public interest.

III. Procedural Requirements

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the June 8, 2016 test procedure final rule remain unchanged for this final rule technical correction. These determinations are set forth in the June 8, 2016 final rule. 81 FR 36992.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Energy conservation test procedures, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on August 5, 2016.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 430 of chapter II of title 10, Code of Federal Regulations to read as follows:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

§ 429.16 [Amended]

■ 2. Section 429.16 is amended:

■ a. In paragraph (a)(1), in the last row of the table, by removing "(c)(2)" and adding in its place "(b)(2)(i)";

■ b. In paragraph (d)(1) by removing "less" and adding in its place "greater";

■ c. In paragraph (d)(2) by removing "greater" and adding in its place "less";

■ d. In paragraph (e)(4) by:

■ i. Adding "of standard air" after "(in cubic feet per minute";

■ ii. Removing the two instances of "(cfm)" and adding in its place "(scfm)"; and

■ iii. Removing paragraph (viii).

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 4. Appendix M to subpart B of part 430 is amended by:

■ a. In section 2.11.b(2), first paragraph, last sentence, removing "readings" and adding in its place "average temperatures measured during the test period";

■ b. Revising section 3.1.9;

■ c. Revising section 3.2.1, introductory text;

■ d. In section 3.2.3.d., adding a sentence after the first sentence;

■ e. In section 3.3, paragraph d., revising Table 8;

■ f. In section 3.5, paragraph h., revising Table 9 and its footnotes;

■ g. In section 3.5.3, adding a sentence after the second sentence;

■ h. Revising section 3.6.3.b., introductory text;

■ i. In section 3.7, paragraph a., revising Table 15;

■ j. In section 3.8.a., removing the sixth sentence;

■ k. In section 3.8.1, adding a sentence after the third sentence and revising Table 16;

■ l. In section 3.9, paragraph f., revising Table 17;

■ m. In section 3.11, redesignating the second section 3.11.1.1 ("Official Test") as section 3.11.1.2;

■ n. In section 3.13.1.d, removing the two instances of "$P2_x$" and adding in their places "P_x";

■ o. In section 4.1.1.b, adding a second sentence;

■ p. In section 4.1.2.1.c, adding a second sentence;

■ q. Redesignating sections 4.1.4.1 and 4.1.4.2 as sections 4.1.5.1 and 4.1.5.2, respectively;

■ r. Redesignating section 4.1.4 as section 4.1.5;

■ s. Redesignating sections 4.1.3.1, 4.1.3.2, and 4.1.3.3 as sections 4.1.4.1, 4.1.4.2, and 4.1.4.3, respectively;

■ t. Redesignating section 4.1.3 as section 4.1.4;

■ u. Redesignating section 4.1.2.7 as section 4.1.3.4;

■ v. Redesignating section 4.1.2.6 as section 4.1.3.3;

■ w. Redesignating section 4.1.2.5 as section 4.1.3.2;

■ x. Redesignating section 4.1.2.4 as section 4.1.3.1;

■ y. Redesignating section 4.1.2.3 as section 4.1.3;

■ z. In newly redesignated section 4.1.3.1, revising the equation and related information immediately before Table 18;

■ aa. In newly redesignated section 4.1.4.1, adding a sentence after the last sentence of the section;

■ bb. In section 4.2.1, adding the sentence "Evaluate the heating mode cyclic degradation factor C_D^h as specified in section 3.8.1 of this appendix.", after "Use Equation 4.2–2 to determine BL(Tj). Obtain fractional bin hours for the heating season, nj/N, from Table 19."; and

■ cc. In section 4.2.3.1, adding the sentence "Evaluate the heating mode cyclic degradation factor C_D^h as specified in section 3.8.1 of this appendix.", after "δ′(Tj) = the low temperature cutoff factor, dimensionless.";

The revisions and additions read as follows:

Appendix M to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps

* * * * *

3.1.9 Requirement for the Air Temperature Distribution Entering the Outdoor Coil

Monitor the temperatures of the air entering the outdoor coil using air sampling devices and/or temperature sensor grids, maintaining the required tolerances, if applicable, as described in section 2.11 of this appendix.

* * * * *

3.2.1 Tests for a System Having a Single-Speed Compressor and Fixed Cooling Air Volume Rate

This set of tests is for single-speed-compressor units that do not have a cooling minimum air volume rate or a cooling intermediate air volume rate that is different than the cooling full load air volume rate. Conduct two steady-state wet coil tests, the A and B Tests. Use the two optional dry-coil tests, the steady-state C Test and the cyclic D Test, to determine the cooling mode cyclic degradation coefficient, C_D^c. If the two optional tests are conducted but yield a tested C_D^c that exceeds the default C_D^c or if the two optional tests are not conducted, assign C_D^c the default value of 0.25 (for outdoor units with no match) or 0.20 (for all other systems). Table 4 specifies test conditions for these four tests.

* * * * *

3.2.3 Tests for a Unit Having a Two-Capacity Compressor (See Section 1.2 of This Appendix, Definitions)

* * * * *

d. * * * If the two optional tests are conducted but yield a tested C_D^c (k = 2) that exceeds the default C_D^c (k = 2) or if the two optional tests are not conducted, assign C_D^c (k = 2) the default value. ***

* * * * *

3.3. * * *

d. * * *

Table 8—Test Operating and Test Condition Tolerances for Section 3.3 Steady-State Wet Coil Cooling Mode Tests and Section 3.4 Dry Coil Cooling Mode Tests

	Test operating tolerance [1]	Test condition tolerance [1]
Indoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	2.0	
Indoor wet-bulb, °F:		
Entering temperature	1.0	[2] 0.3
Leaving temperature	[2] 1.0	
Outdoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	[3] 2.0	
Outdoor wet-bulb, °F:		
Entering temperature	1.0	[4] 0.3
Leaving temperature	[3] 1.0	
External resistance to airflow, inches of water	0.05	[5] 0.02
Electrical voltage, % of rdg.	2.0	1.5
Nozzle pressure drop, % of rdg.	2.0	

[1] See section 1.2 of this appendix, Definitions.

[2] Only applies during wet coil tests; does not apply during steady-state, dry coil cooling mode tests.

[3] Only applies when using the outdoor air enthalpy method.

[4] Only applies during wet coil cooling mode tests where the unit rejects condensate to the outdoor coil.

[5] Only applies when testing non-ducted units.

* * * * *

3.5 * * *

h. * * *

Table 9—Test Operating and Test Condition Tolerances for Cyclic Dry Coil Cooling Mode Tests

	Test operating tolerance [1]	Test condition tolerance [1]
Indoor entering dry-bulb temperature [2], °F	2.0	0.5
Indoor entering wet-bulb temperature, °F	....	(3)
Outdoor entering dry-bulb temperature [2], °F	2.0	0.5
External resistance to airflow [2], inches of water	0.05	
Airflow nozzle pressure difference or velocity pressure [2], % of reading	2.0	[4] 2.0
Electrical voltage [5], % of rdg.	2.0	1.5

[1] See section 1.2 of this appendix, Definitions.

[2] Applies during the interval that air flows through the indoor (outdoor) coil except for the first 30 seconds after flow initiation. For units having a variable-speed indoor blower that ramps, the tolerances listed for the external resistance to airflow apply from 30 seconds after achieving full speed until ramp down begins.

[3] Shall at no time exceed a wet-bulb temperature that results in condensate forming on the indoor coil.

[4] The test condition shall be the average nozzle pressure difference or velocity pressure measured during the steady-state dry coil test.

[5] Applies during the interval when at least one of the following—the compressor, the outdoor fan, or, if applicable, the indoor blower—are operating except for the first 30 seconds after compressor start-up.

* * * * *

3.5.3 Cooling-Mode Cyclic-Degradation Coefficient Calculation

* * * If the two optional tests are conducted but yield a tested C_D^c that exceeds the default C_D^c or if the two optional tests are not conducted, assign C_D^c the default value of 0.25 for variable-speed compressor systems and outdoor units with no match, and 0.20 for all other systems.* * *

* * * * *

3.6.3 Tests for a Heat Pump Having a Two-Capacity Compressor (see Section 1.2 of This Appendix, Definitions), Including Two-Capacity, Northern Heat Pumps (see Section 1.2 of This Appendix, Definitions)

* * * * *

b. Conduct the optional high temperature cyclic test ($H1C_1$) to determine the heating mode cyclic-degradation coefficient, C_D^h. If this optional test is conducted but yields a tested C_D^h that exceeds the default C_D^h or if the optional test is not conducted, assign C_D^h the default value of 0.25. If a two-capacity heat pump locks out low capacity operation at lower outdoor temperatures, conduct the high temperature cyclic test (H1C$_2$) to determine the high-capacity heating mode cyclic-degradation coefficient, C_D^h (k=2). If this optional test at high capacity is conducted but yields a tested C_D^h (k = 2) that exceeds the default C_D^h (k = 2) or if the optional test is not conducted, assign C_D^h the default value. The default C_D^h (k=2) is the same value as determined or assigned for the low-capacity cyclic-degradation coefficient, C_D^h [or equivalently, C_D^h (k=1)]. Table 12 specifies test conditions for these nine tests.

* * * * *

3.7 * * *

a. * * *

TABLE 15—TEST OPERATING AND TEST CONDITION TOLERANCES FOR SECTION 3.7 AND SECTION 3.10 STEADY-STATE HEATING MODE TESTS

	Test operating tolerance [1]	Test condition tolerance [1]
Indoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	2.0	
Indoor wet-bulb, °F:		
Entering temperature	1.0	
Leaving temperature	1.0	
Outdoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	[2]2.0	
Outdoor wet-bulb, °F:		
Entering temperature	1.0	0.3
Leaving temperature	[2]1.0	
External resistance to airflow, inches of water	0.05	[3]0.02
Electrical voltage, % of rdg	2.0	1.5
Nozzle pressure drop, % of rdg	2.0	

[1] See section 1.2 of this appendix, Definitions.

[2] Only applies when the Outdoor Air Enthalpy Method is used.

[3] Only applies when testing non-ducted units.

* * * * *

3.8.1 * * *

* * * If the optional cyclic test is conducted but yields a tested C_D^h that exceeds the default C_D^h or if the optional test is not conducted, assign C_D^h the default value of 0.25.* * *

* * * * *

TABLE 16—TEST OPERATING AND TEST CONDITION TOLERANCES FOR CYCLIC HEATING MODE TESTS

	Test operating tolerance [1]	Test condition tolerance [1]
Indoor entering dry-bulb temperature,[2] °F	2.0	0.5
Indoor entering wet-bulb temperature,[2] °F	1.0	
Outdoor entering dry-bulb temperature,[2] °F	2.0	0.5
Outdoor entering wet-bulb temperature,[2] °F	2.0	1.0
External resistance to air-flow,[2] inches of water	0.05	
Airflow nozzle pressure difference or velocity pressure,[2] % of reading	2.0	[3]2.0
Electrical voltage,[4] % of rdg	2.0	1.5

[1] See section 1.2 of this appendix, Definitions.

[2] Applies during the interval that air flows through the indoor (outdoor) coil except for the first 30 seconds after flow initiation. For units having a variable-speed indoor blower that ramps, the tolerances listed for the external resistance to airflow shall apply from 30 seconds after achieving full speed until ramp down begins.

[3] The test condition shall be the average nozzle pressure difference or velocity pressure measured during the steady-state test conducted at the same test conditions.

[4] Applies during the interval that at least one of the following—the compressor, the outdoor fan, or, if applicable, the indoor blower—are operating, except for the first 30 seconds after compressor start-up.

* * * * *

3.9 * * *

f. * * *

TABLE 17—TEST OPERATING AND TEST CONDITION TOLERANCES FOR FROST ACCUMULATION HEATING MODE TESTS

	Test operating tolerance [1]		Test condition tolerance [1]
	Sub-interval H [2]	Sub-interval D [3]	Sub-interval H [2]
Indoor entering dry-bulb temperature, °F	2.0	[4]4.0	0.5
Indoor entering wet-bulb temperature, °F	1.0		
Outdoor entering dry-bulb temperature, °F	2.0	10.0	1.0

TABLE 17—TEST OPERATING AND TEST CONDITION TOLERANCES FOR FROST ACCUMULATION HEATING MODE TESTS—Continued

	Test operating tolerance [1]		Test condition tolerance [1]
	Sub-interval H [2]	Sub-interval D [3]	Sub-interval H [2]
Outdoor entering wet-bulb temperature, °F	1.5		0.5
External resistance to airflow, inches of water	0.05		[5] 0.02
Electrical voltage, % of rdg	2.0		1.5

[1] See section 1.2 of this appendix, Definitions.

[2] Applies when the heat pump is in the heating mode, except for the first 10 minutes after termination of a defrost cycle.

[3] Applies during a defrost cycle and during the first 10 minutes after the termination of a defrost cycle when the heat pump is operating in the heating mode.

[4] For heat pumps that turn off the indoor blower during the defrost cycle, the noted tolerance only applies during the 10 minute interval that follows defrost termination.

[5] Only applies when testing non-ducted heat pumps.

* * * * *

4.1.1 * * *

b. * * * Evaluate the cooling mode cyclic degradation factor C_D^c as specified in section 3.5.3 of this appendix.

* * * * *

4.1.2.1 * * *

c. * * * Evaluate the cooling mode cyclic degradation factor C_D^c as specified in section 3.5.3 of this appendix.

* * * * *

4.1.3.1 * * *

n_j/N = fractional bin hours for the cooling season; the ratio of the number of hours during the cooling season when the outdoor temperature fell within the range represented by bin temperature T_j to the total number of hours in the cooling season, dimensionless.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 18. Use Equations 4.1.3–1 and 4.1.3–2, respectively, to evaluate $\dot{Q}_c^{k=1}(T_j)$ and $\dot{E}_c^{k=1}(T_j)$. Evaluate the cooling mode cyclic degradation factor C_D^c as specified in section 3.5.3 of this appendix.

* * * * *

4.1.4.1 * * *

* * * Evaluate the cooling mode cyclic degradation factor C_D^c as specified in section 3.5.3 of this appendix.

* * * * *

Appendix M to Subpart B of Part 430—[Amended]

■ 5. In the table below, for each section of appendix M to subpart B of part 430 indicated in the left column, remove the language indicated in the middle column from wherever it appears in that section, and add the language indicated in the right column.

Sections	Remove	Add
3.2.2.1, 3.2.3.a	A default value of C_D^c may be used in lieu of conducting the cyclic test. The default value of C_D^c is 0.20.	If the two optional tests are conducted but yield a tested C_D^c that exceeds the default C_D^c or if the two optional tests are not conducted, assign C_D^c the default value of 0.20.
3.2.4.a	A default value for C_D^c may be used in lieu of conducting the cyclic test. The default value of C_D^c is 0.25.	If the two optional tests are conducted but yield a tested C_D^c that exceeds the default C_D^c or if the two optional tests are not conducted, assign C_D^c the default value of 0.25.
3.6.1	A default value for C_D^h may be used in lieu of conducting the cyclic test. The default value of C_D^h is 0.25.	If this optional test is conducted but yields a tested C_D^h that exceeds the default C_D^h or if the optional test is not conducted, assign C_D^h the default value of 0.25.
3.6.2, 3.6.4.a	A default value for C_D^h may be used in lieu of conducting the cyclic. The default value of C_D^h is 0.25.	If this optional test is conducted but yields a tested C_D^h that exceeds the default C_D^h or if the optional test is not conducted, assign C_D^h the default value of 0.25.

Appendix M to Subpart B of Part 430—[Amended]

■ 6. For each newly redesignated section of appendix M to subpart B of part 430 in the first column, remove the cross reference sections in the middle column, and add in their places, the cross reference sections in the right column.

Section	Remove	Add
4.1.3	4.1.2.4	4.1.3.1
	4.1.2.5	4.1.3.2
	4.1.2.6	4.1.3.3
	4.1.2.7	4.1.3.4
4.1.4.3	4.1.2.7	4.1.3.4

[FR Doc. 2016–19227 Filed 8–17–16; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 440

[Docket No.: FAA–2014–1012; Amdt. No. 440–4]

RIN 2120–AK44

Reciprocal Waivers of Claims for Licensed or Permitted Launch and Reentry Activities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending its commercial space regulations governing reciprocal waivers of claims to require that customers waive claims against all the customers involved in a launch or reentry, including those signing a different set of reciprocal waivers. Also, customers of a customer contracting directly with a licensee or permittee will not have to sign a waiver directly with the licensee or permittee, other customers, or the FAA. The FAA is also adding an appendix to provide permittees with an example of a Waiver of Claims and Assumption of Responsibility for Permitted Activities with No Customer.

DATES: Effective October 17, 2016.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see "How To Obtain Additional Information" in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For questions concerning this rule, contact Shirley McBride, Regulations Program Lead, AST–300, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–7470; email *Shirley.McBride@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The Commercial Space Launch Act of 1984, as amended at 51 U.S.C. 50901–50923 (Chapter 509), authorizes the Department of Transportation and thus the FAA, through delegations, to oversee, license, and regulate commercial launch and reentry activities, and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 51 U.S.C. 50904, 50905. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 51 U.S.C. 50905. Section 50901(a)(7) directs the FAA to regulate only to the extent necessary, in relevant part, to protect the public health and safety and safety of property. The FAA is also responsible for encouraging, facilitating, and promoting commercial space launches by the private sector. 51 U.S.C. 50903.

Chapter 509 requires that, for each commercial space launch or reentry, the Department of Transportation (DOT) and, through delegation, the Federal Aviation Administration (FAA) enter into a reciprocal waiver of claims agreement with "the licensee or transferee, contractors, subcontractors, crew, space flight participants, and customers of the licensee or transferee, and contractors and subcontractors of the customers. . . ." 51 U.S.C. 50914(b)(2). This requirement also applies to permittees under 51 U.S.C. 50906(i).

I. Overview of Final Rule

This rule revises part 440 in the following ways: (1) Amends § 440.17 to describe fully the reciprocal waiver of claims requirements applicable to the relevant appendices; (2) amends § 440.17 and updates appendices B and C so that customers of any customer contracting directly with a licensee or permittee do not have to sign a waiver directly with the licensee or permittee, other customers, or the FAA; (3) amends § 440.17 and updates appendices B and C of part 440 so that customers waive claims, as required by statute, against all the customers involved in the launch or reentry, including those signing a different set of reciprocal waivers; (4) amends § 440.3 to add a definition of "first-tier customer" and "part 440 customer"; and (5) adds an appendix to provide licensees with an example of a Waiver of Claims and Assumption of Responsibility for Permitted Activities with No Customer.

These changes will result in cost savings to the licensee, government and customers, and minimal cost to any customer in a direct contractual relationship with the licensee or permittee if it has customers to the launch. This rule does not address changes to the reciprocal waiver of claims created by the U.S. Commercial Space Launch Competitiveness Act, P.L. 114–90 (2015). Those changes will be addressed by a future rulemaking.

II. Background

On January 13, 2015, the FAA published a notice of proposed rulemaking (NPRM), "Reciprocal Waivers of Claims for Licensed or Permitted Launch and Reentry Activities," 80 FR 1590, proposing to amend the FAA's regulations regarding reciprocal waivers of claims agreements. The NPRM also discussed the potential burden the reciprocal waivers of claims requirements may impose on licensees and permittees launching hosted payloads. The comment period closed on March 16, 2015. On June 15, 2015, the FAA reopened the comment period for 30 days because the regulatory evaluation was not posted to the docket prior to the close of the NPRM's comment period. This second comment period was limited to comments on the regulatory evaluation only, and closed on July 15, 2015. The FAA received five comments on the NPRM and no comments on the regulatory evaluation.

III. Discussion of Final Rule and Public Comments

The FAA received comments from five entities, including launch operators, service providers, and one individual. Launch operators who provided comments are Blue Origin, LLC (Blue Origin), Lockheed Martin Corporation (Lockheed), and Space Exploration Technologies Corporation (SpaceX). Harris Corporation (Harris) and an individual also commented.

In general, the commenters supported the proposed requirements. A few commenters suggested changes to the proposed regulatory text in order to achieve the FAA's proposed outcome. After careful consideration of the comments, the FAA generally adopts the provisions as proposed, but makes the following changes. The FAA amends § 440.17(b) and (c) and part 440, appendices B and C, to include part 440 customers and their contractors and subcontractors in the reciprocal waiver of claims scheme. The FAA adds § 440.17(c)(1)(iii)(D) to preserve the statutory and regulatory requirements that all customers waive claims against all the other parties involved in the licensed permitted activity. Lastly, the FAA removes permittees from the indemnification scheme reserved by statute for licensees only, thereby maintaining the scope of the indemnification scheme as set out in 51 U.S.C. 50915.

A. First-Tier and Part 440 Customers

As originally proposed, § 440.17(c) is amended to require the FAA, the licensee or permittee, and each first-tier customer to enter into a reciprocal waiver of claims agreement for each licensed or permitted activity in which the U.S. Government, any agency, or its contractors and subcontractors are involved, or where property insurance is required under § 440.9(d). Additionally, as proposed, § 440.3 is amended to define the terms "first-tier customer" and "part 440 customer." A first-tier customer is one who satisfies the definition of a customer and has a contractual relationship with a license or permit holder to obtain launch or reentry services. A part 440 customer means one who satisfies the regulatory definition of a customer and who is not a first-tier customer. Blue Origin requested that the FAA clarify how a licensee or permittee should identify its customers under the proposed rule. The FAA adopts these provisions as proposed, and provides further clarification below.

Blue Origin requested clarification on how the requirement to enter into a reciprocal waiver of claims agreement with each first-tier customer would apply to a situation in which a first-tier customer was a single entity representing a group of persons. Blue Origin stated that it "interprets the proposal to require that only the single entity representing the group will be required to sign a reciprocal waiver with the licensee/permittee and FAA."[1] Blue Origin also requested that the FAA confirm that "if a first-tier customer is a single entity representing a group of persons, the licensee/permittee is required to enter into a cross waiver of claims only with a representative of the group as the first-tier customer."[2]

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[1] Blue Origin Comment at 2.

An entity's status as the representative of a group is not the determining factor as to whether or not that entity is required to sign a reciprocal waiver with the licensee or permittee and the FAA. Rather, a licensee or permittee is only required to enter into a reciprocal waiver with customers with whom it is in a contractual relationship.

To determine the entities with which it must execute a reciprocal waiver, the licensee or permittee should determine what entities it has contracted with for the licensed or permitted activity who also qualify as customers under 14 CFR 440.3. Accordingly, if a licensee entered into a contract with a number of entities for launch or reentry services, it would enter into reciprocal waivers with each of them.

Blue Origin provided a hypothetical scenario in which a school, university research lab, or other educational institution represented a group of students that contributed to the development of a payload. In this hypothetical situation, the single entity representing the group *may* be the only entity required to sign a reciprocal waiver with the licensee or permittee and the FAA. However, the hypothetical entity would be the *only* entity required to sign the reciprocal waiver only if it was the only entity in a contractual relationship with the licensee or permittee, and therefore the only entity who would qualify as a first-tier customer.[3] In that case, the representative would be the only first-tier customer and, therefore, the only party required to sign the reciprocal waiver of claims with the licensee or permittee and the FAA. If, however, any other member of the group was also in a direct contractual relationship with the licensee or permittee and also met the FAA's definition of customer under § 440.3, that member would also be a first-tier customer and would also be required to sign a reciprocal waiver of claims with the licensee or permittee and the FAA. It would not, however, have to sign with all other first-tier customers because this final rule ensures that customers waive claims against all other customers involved in a launch or reentry, including those signing different reciprocal waivers.

Blue Origin also expressed concern regarding how a licensee or permittee will determine who its customers are. Specifically, Blue Origin pointed out that determining whether each party has an interest in the payload is complicated by the fact that "people have varying levels of involvement (*e.g.*, a student works an entire semester on a project, vs. one who works a few hours), or have left the group (*e.g.*, some students graduate prior to completion of a payload, and are replaced by other students)."[4]

The FAA is not changing the definition of "customer" under § 440.3 in this rulemaking. However, the burden of identifying part 440 customers does shift with this rule, not to the licensee or permittee as Blue Origin suggests, but to the appropriate first-tier customer. This is because under this rule a licensee or permittee is responsible for implementing a reciprocal waiver of claims only with those customers with whom it is in a direct contractual relationship. A first-tier customer, as a result of this rule, will be responsible for implementing a reciprocal waiver of claims with each of its customers.

Although it is not changing the definition of customer under § 440.3, the FAA reiterates what it has said about the definition of customer in previous rulemakings. In its 1996 rulemaking, the FAA pointed out that it construes the term customer in proposed § 440.3 more broadly than just "the party that actually contracts with the commercial launch services provider and prospective licensee."[5] The 1996 NPRM provided the example of a customer who had placed its property on board the payload in order to receive an on-orbit service, such as microgravity experiments, and stated that such an entity would be considered a customer to the launch even though it did not procure the launch.[6] In the final rule that resulted from the 1996 NPRM, the FAA stated: "The definition of 'customer' is further modified in the final rule to include any person who places property on board a payload for the purpose of obtaining launch or payload services . . . ."[7]

The FAA's definition of customer, therefore, as applied to Blue Origin's hypothetical, would be based on ownership rights in the payload rather than the level of involvement in developing the payload. For example, a person may build a payload and sell it to a company. The company may then place that payload on board a rocket. The builder has no ownership rights in the payload, and therefore would not be a customer under § 440.3. The company who purchased, and therefore owns the payload, would be a customer under § 440.3. The person facing financial exposure for failing to properly identify these other non-signing customers would be the first-tier customer.

B. Government Customers

A Government customer need not sign a reciprocal waiver of claims because the FAA signs the reciprocal waiver of claims on behalf of the Government. Although, the proposed rule did not mention Government customers, Harris Corporation requested clarification on the treatment of Government-hosted payload customers on commercial payloads launched pursuant to Chapter 509. The FAA makes no change based on this comment.

Specifically, Harris asked whether the FAA would sign the waiver form on behalf of a Government customer, whether a Government customer could be considered a part 440 customer, and whether a Government customer's contractor would be considered a contractor of the United States for purposes of § 440.14(c). As the agency has stated in previous rulemakings, "[w]hen the licensee's customer is a U.S. Government agency, the agency is treated the same as any nongovernmental customer for purposes of determining the appropriate amount of property insurance required of the licensee and in terms of the U.S. Government's waiver of claims or property damage or less above the required amount of property insurance under [51 U.S.C. 50914(b)(2)]. That is, a Government payload is not covered by the required Government property insurance and the United States Government agency-customer accepts responsibility for property damage to the payload."[8]

Because the FAA signs on behalf of the U.S. Government, any Government customer would not separately sign any reciprocal waiver of claims. The designation as a part 440 customer does not change a customer's responsibilities under the reciprocal waivers of claims, it only affects with whom the customer must sign a reciprocal waiver of claims. A Government customer's status as a first-tier or part 440 customer does not matter, because the FAA signs on behalf of the Government.

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[2] Blue Origin Comment at 2.

[3] The FAA assumes for purposes of this hypothetical that the entity representing the group meets the FAA's definition of customer in 14 CFR 440.3, by, for example, being the one who procures the launch.

[4] Blue Origin Comment at 2.

[5] *Financial Responsibility Requirements for Licensed Launch Activities*, NPRM, 61 FR 38992, 39002 (July 25, 1996).

[6] *Financial Responsibility*, 61 FR at 39002.

[7] *Financial Responsibility Requirements for Licensed Launch Activities*, Final Rule, 63 FR 45592, 45607 (August 26, 1998).

[8] *Financial Responsibility*, 61 FR at 39001.

As to Harris' last question concerning whether a contractor of a Government customer would be considered a contractor of the United States for purposes of § 440.14(c), it is beyond the scope of the current rulemaking. Additionally, the FAA notes that § 440.14(c) is not currently a regulatory provision.

C. Extension of the Reciprocal Waivers of Claims Requirements

The FAA intended to amend only the method by which the obligations under the reciprocal waiver of claims were extended. Rather than requiring the licensee or permittee to implement the reciprocal waiver of claims with its contractors, subcontractors, customers, and customers' contractors and subcontractors, this rule requires that each customer extend the reciprocal waiver of claims to its contractors and subcontractors. Although it did not receive comment on the issue, the FAA adds the extension of the reciprocal waiver of claims requirements to § 440.17(b) to require the licensee or permittee, each first-tier customer, and each part 440 customer to extend the requirements to their respective contractors and subcontractors. Therefore, and as discussed below, a part 440 customer must waive and release claims, assume responsibility, hold harmless, and indemnify other parties identified in the waiver as a result of both the explicit requirement in § 440.17(c)(1)(iii)(D) and the extension of the reciprocal waiver of claims requirements in § 440.17(c)(2) and (c)(1)(iii).

Additionally, the FAA adds language to § 440.17(c)(2)(i), (ii), and (iii), and the associated part 440 appendices specifying that a party to a reciprocal waiver of claims must agree in that waiver to indemnify another party to the agreement from claims by the indemnifying party's contractors, subcontractors, and in the case of the customer, customers, arising out of the indemnifying party's failure to correctly extend the reciprocal waiver of claims requirement. This change was contemplated by the proposed rule, and preserves the requirements of this section prior to the amendments included in this final rule.

1. Extension of Reciprocal Waiver of Claims to Part 440 Customers' Contractors and Subcontractors

SpaceX commented that the proposed rule did not effectively extend the reciprocal waiver of claims requirements to a part 440 customer's contractors and subcontractors such that those contractors and subcontractors waived claims against all other parties otherwise protected by the reciprocal waiver of claims. SpaceX also commented that the appendices should be adjusted to state that a first-tier customer indemnifies the appropriate parties from and against liability, loss, or damage arising out of any claim brought by its customer's contractors and subcontractors. Harris commented that § 440.17(b) should be revised to include part 440 customers and their contractors and subcontractors in the waiver scheme to ensure that the parties to the reciprocal waiver of claims waive claims against them. In this rule the FAA changes § 440.17 to apply to part 440 customers' contractors and subcontractors, but does not adopt SpaceX's proposed language for the appendices. This marks a change from the regulatory text that the FAA originally proposed, based on comments discussed below.

SpaceX recommended additions to proposed § 440.17 and the associated appendices "to ensure that the regulations maintain the current obligations of all customers' contractors and subcontractors with respect to the licensee/permittee."[9] SpaceX stated that although the proposed rule might streamline the reciprocal waiver of claims process, "it does not expressly provide the same protections to the licensee or permittee contained in the current rule."[10] Specifically, SpaceX argued that, under the proposed rule, the licensee or permittee would have been required to waive and release any claims it might have against a part 440 customer and its contractors and subcontractors, but a part 440 customer's contractors and subcontractors would not have been required to waive claims against all other parties to which the reciprocal waiver requirements extended. SpaceX also noted that the contractors and subcontractors of a part 440 customer were not accounted for in proposed § 440.17 or in proposed sections 4(b) and 5(b) of the part 440 appendices in the same way as under the current rules. SpaceX provided suggested language to address what it saw as inconsistencies.

After considering the comments, the FAA has decided to make changes to the regulatory text to preserve the intent of this rulemaking and Chapter 509. Accordingly, § 440.17(b) and (c) require that each customer extends the reciprocal waiver of claims requirements to the customer's contractors and subcontractors. The reciprocal waiver of claims requires that the contractors and subcontractors of each customer waive and release claims, assume responsibility, hold harmless, and indemnify other parties identified in the waiver, including the licensee or permittee. This rule explicitly requires the licensee or permittee, each first-tier customer, and each part 440 customer to extend the reciprocal waiver of claims requirements to their contractors, subcontractors and customers.

The FAA notes, however, that SpaceX recommended changing the text in each of the appendices to part 440 at section 4(b) to read: "Customer shall extend the requirements of the waiver . . . respectively, to its Contractors, Subcontractors, customers, and such customers' contractors and subcontractors . . . ." The FAA is not adopting this suggested change for two reasons. First, this suggested language misappropriates the responsibility to extend the reciprocal waiver of claims requirements. Under SpaceX's proposed language, each first-tier customer would be required to extend the reciprocal waiver of claims requirements to its customers' contractors and subcontractors. Instead, this rule requires each customer to extend the reciprocal waiver of claims requirements to its contractors and subcontractors, but not to its customers' contractors and subcontractors. This is consistent with the previous version of the part 440 appendices. Second, this language is unnecessary because the extension of responsibilities in § 440.17(b)(2) and (3) and (c)(1)(iii) created by this rulemaking ensure that a part 440 customer extends to the customer's contractors and subcontractors the requirements of the reciprocal waiver of claims, which include waiving and releasing claims, assuming responsibility, and holding harmless and indemnifying other parties identified in the waiver,[11] because a first-tier customer must extend the waiver requirements to its customer. In other words, the requirements work as follows:

(1) Under § 440.17 and the part 440 appendices, a first-tier customer must waive and release claims, assume responsibility, hold harmless, and indemnify other parties identified in the waiver, as set forth in paragraphs 2(b) and 3(a) of the appendices. Additionally, a first-tier customer must extend each of these requirements to its

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[9] SpaceX comment p. 1

[10] SpaceX comment at p. 2

[11] *See, e.g.,* 80 FR 1590, 1600 (extending the assumption of responsibility and waiver and release of claims for a licensed launch with one customer).

contractors, subcontractors, and customers.

(2) Because a first-tier customer must extend the requirements of the waiver, including the requirement to extend the waiver, to its customers, it follows that its customers will have the same obligation as a first-tier customer under the waiver.

(3) Therefore, because of the extension of responsibilities, a first-tier customer's customers will be required, in turn, to extend the waiver requirements to their contractors, subcontractors and customers. Additionally, § 440.17(b)(3) and (c)(1)(iii) explicitly require that each part 440 customer extends the reciprocal waiver of claims requirements to its contractors and subcontractors.

Therefore, the FAA does not need to amend section 4(b) of the appendices to ensure that part 440 customers extend the waiver requirements to their contractors and subcontractors. Section 440.17(b)(2) and (3) and (c)(1)(iii) and section 4(b) of the appendices already require this. The FAA also disagrees with SpaceX's suggestion to amend section 5(b) of the appendices to require that a first-tier customer indemnify the appropriate parties from and against liability, loss, or damage arising out of any claim brought by its customer's contractors and subcontractors. Adopting SpaceX's suggestion would place an additional burden of indemnification on a first-tier customer that did not previously exist in part 440. Previous part 440 appendices required only that a first-tier customer indemnify the appropriate parties from and against liability, loss, or damage arising out of certain claims brought by its contractors, subcontractors, and employees. SpaceX's proposed language would additionally require a first-tier customer to indemnify from claims brought by its customer's contractors, subcontractors, and employees. As explained above, a first-tier customer is required to extend the reciprocal waiver of claims requirements to its customers. As a result of this extension, a first-tier customer's customer, rather than the first-tier customer himself, is required to indemnify against certain claims brought by its contractors, subcontractors, and employees.

Lastly, Harris pointed out that the absence of part 440 customers and their contractors and subcontractors in proposed § 440.17(b) exposes these parties to liability that represents a departure from Chapter 509. The FAA agrees, and this rule requires parties to the reciprocal waiver of claims described in § 440.17(b) to waive claims against part 440 customers and their contractors and subcontractors.

2. Extension of Reciprocal Waiver of Claims to Part 440 Customers

In its comment, Harris also noted that the FAA overlooked explicitly requiring each part 440 customer to comply with the reciprocal waiver of claims requirements. Therefore, the FAA now adds an explicit requirement in addition to the extension of requirements provisions in order to clarify that each part 440 customer must enter into a reciprocal waiver of claims agreement. This marks a change from the regulatory text that the FAA originally proposed.

Harris commented that proposed § 440.17(b) and (c) would not have ensured that part 440 customers waive claims against the other parties included in the waiver scheme. Harris further asserted that the purpose behind the waiver scheme is "(1) [t]o limit the total universe of claims that might arise as a result of a launch; and (2) to eliminate the necessity for all of these parties to obtain property and casualty insurance to protect against these claims."[12]

The FAA agrees. Under Chapter 509 and the FAA's current rules, the licensee or permittee is required to enter into a reciprocal waiver of claims with all customers and their respective contractors and subcontractors involved in launch or reentry services. In other words, each customer must waive and release claims, assume responsibility, hold harmless, and indemnify other parties identified in the waiver. In the NPRM, the FAA proposed to require only first-tier customers to sign a reciprocal waiver of claims with the FAA and the licensee or permittee. By separating first-tier customers from part 440 customers, the proposed rule did not explicitly require part 440 customers to waive and release claims, assume responsibility, hold harmless, and indemnify other parties identified in the waiver. Instead, these requirements were implied by the extension of requirements in which a first-tier customer is required to extend the reciprocal waiver of claims requirements to its customers, contractors, and subcontractors. Because commenters expressed some confusion about the requirements, the FAA amends § 440.17(b) and adds § 440.17(c)(1)(iii)(D) to explicitly require that part 440 customers waive claims against all the other parties involved in the licensed activity.

As stated previously, these requirements levied on part 440 customers also exist as a result of the extension of the reciprocal waiver of claims that is required by § 440.17(b)(2), (b)(3), and (c)(1)(iii). By shifting the responsibility to extend the reciprocal waiver of claims from the licensee or permittee to the appropriate customer, the burden to indemnify also shifts. Therefore, should a customer fail to extend the reciprocal waiver of claims requirements to its customer, and its customer bring a claim against a party involved in the launch, the customer who failed to extend would be required to indemnify that party against its customer's claim. This represents a shift from the old scheme in which all customers signed the reciprocal waiver of claims, and therefore no one would be required to indemnify against a customer's claim unless the licensee failed to identify a customer and ensure that that customer signed the reciprocal waiver of claims.

D. Removal of Permittees From Indemnification Scheme

This rule does not change the indemnification scheme created by 51 U.S.C. 50915. Chapter 509 provides that the United States Government shall pay for a successful third party claim to the extent the claim exceeds the insurance coverage required by statute but does not exceed the statutory limit for such coverage, provided Congress appropriates the funds.[13] Chapter 509 also lists the persons against whom the claim may be brought in order to qualify for this coverage.[14] This list includes licensees, but does not include permittees. Therefore, Congress will not appropriate funds for a third party claim against a permittee that exceeds the insurance requirements in Chapter 509.

Although it received no comments on the issue, the FAA has identified an error in the proposed rule that it corrects with the final rule. In the proposed rule, the FAA would have included permittees in the indemnification scheme reserved by statute for licensees only. Because this error would create a conflict with the FAA's statutory authority, which the FAA did not intend, the FAA has amended the regulatory text in this final rule to comply with Chapter 509 by removing permittees from the section 50915 indemnification scheme.

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[12] Commercial Space Launch Act Amendments of 1988, Report of the Senate Committee on Commerce, Science, and Transportation on H.R. 4399, S. Rep. No. 100–593 at 14 (Oct. 7, 1988).

[13] 51 U.S.C. 50915(a)(1).

[14] 51 U.S.C. 50915(a)(3)(A).

E. Miscellaneous

This rule includes a new § 440.17(f) to include all provisions related to willful misconduct. The NPRM did not propose changing the willful misconduct provisions, and this rule also does not change those provisions but located them in § 440.17(f) for clarity.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Public Law 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866, (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below. As we received no comments on the benefit cost methodology, we used the same methodology here.

Total Benefits and Costs of This Rule

These changes will result in cost savings to the licensee or permittee, Government and customers and minimal cost to the first-tier customer if it has customers to the launch.

Cost savings are presented in the table below, which is discussed in more detail in the paragraphs that follow.

COST SAVINGS FROM THE FINAL RULE

	Average	7% Present value cost savings	3% Present value cost savings
Government Cost Savings	$138,440	$97,232	$118,092
Licensee and Permittee Cost Savings:			
No Longer Requesting Waivers	136,282	95,716	116,251
No Longer Obtaining Part 440 Customer Signatures	17,035	11,965	14,531
Cost Savings from Allowing Signatures on Different Set of Reciprocal Waiver of Claims	365	256	311
Total estimated cost savings	292,121	205,169	249,185

Minor rounding occurs in summation.

The final rule might result in minimal costs to first-tier customers who will be responsible for implementing reciprocal waivers of claims with their customers.

Who Is Potentially Affected by This Rule?

Launch Licensees and Permittees
Federal Government
Customers of the Launch Licensees and Permittees

Assumptions

The following assumptions apply to the analysis:

- Ten year time horizon
- 2013 dollars
- Without the rule, the FAA will issue 4 partial waivers to the reciprocal cross waiver requirement per year
- Without the rule, a licensee or permittee will have to obtain some signatures from part 440 customers on launches unless waivers have been issued

Benefits of This Rule

The final rule will result in cost savings because licensees and permittees will no longer have to obtain signatures of part 440 customers on the reciprocal waiver of claims. Cost savings may result because licensees and permittees will not have to incur expenses to obtain part 440 signatures or licensees and permittees will not seek waivers from the FAA to the requirement that part 440 customers sign the reciprocal waiver of claims. The estimated cost savings to the licensee, permittee, and the Federal Government that will result were indicated in the table above.

Also, the FAA estimated a small cost savings due to the final rule allowing a customer added at the last minute to sign a new and separate waiver of claims agreement.

Finally, the FAA expects minimal cost savings with the addition of a template for permitted activities with no customer.

Costs of This Rule

The responsibility to obtain signatures of customers who are not in a direct contractual relationship (*i.e.,* part 440 customers) with the licensee or permittee will shift under the final rule, from the licensee or permittee to the appropriate first-tier customer. The FAA expects the costs the first-tier customer will incur under the rule to implement the reciprocal waiver of claims to be minimal because the first-tier customer could modify the templates provided in appendices B and C to part 440 and add them to the contract that it has with its customers. The FAA thinks that this will be a one-time cost that could be accomplished in a short period of time by the company's in-house lawyers. In addition, customers are currently required to extend the FAA reciprocal waiver of claims obligations to their respective contractors and subcontractors, so the FAA does not expect the changes to the NPRM to result in additional costs.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this final rule will not have a significant impact on a substantial number of entities because the rule will result in cost savings and some minimal costs as described below. The FAA solicited comments in the NPRM regarding the initial regulatory flexibility analysis minimal cost determination, and received none. As we made the same determination for the initial regulatory flexibility analysis, we accept this determination for the final regulatory flexibility analysis. The reasons for the minimal cost determination are provided below.

Cost savings are expected because the licensee or permittee will no longer have to request waivers or obtain part 440 customers' signatures, nor have to reopen the original waivers to obtain signatures if a party is added to the launch at the last minute. However, there might be minimal costs to first-tier customers. The responsibility to obtain signatures of customers who are not in a direct contractual relationship (*i.e.,* part 440 customers) with the licensee or permittee will shift under the final rule, from the licensee or permittee to the appropriate first-tier customer. This will be a new requirement on the first-tier customer.

Under the final rule, the first-tier customers will be responsible, as described above, for implementing a reciprocal waiver of claims with their customers. These costs will be minimal because the first-tier customer could modify the templates provided in appendices B and C to part 440 and add it to the contract that it has with its customers. The FAA thinks that this will be a one-time cost that could be accomplished in a short period of time by the company's in-house lawyers at an estimated cost of $185.

It is not clear whether this minimal cost will impact a substantial number of small entities. To date, the FAA is unaware of any small entities who would be affected. The agency does not know whether in the future there might be small entities, that will have to implement a reciprocal waiver of claims with their customers, but even if there were a substantial number of small entities, the final rule will not have a significant impact on these entities.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub.L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $155.0 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this rule.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 5–6.6 and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a "significant energy action" under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects in 14 CFR Part 440

Indemnity payments, Insurance, Reporting and recordkeeping requirements, Space transportation and exploration.

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends chapter III of title 14, Code of Federal Regulations as follows:

PART 440—FINANCIAL RESPONSIBILITY

■ 1. The authority citation for part 440 continues to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 2. Amend § 440.3 by adding the definitions of *first-tier customer* and *part 440 customer* in alphabetical order to read as follows:

§ 440.3 Definitions.

* * * * *

First-tier customer means a customer as defined in this section, and who has a contractual relationship with a license or permit holder to obtain launch or reentry services.

* * * * *

Part 440 customer means a customer as defined in this section, other than a first-tier customer.

* * * * *

■ 3. Amend § 440.17 by revising paragraphs (b) through (f) to read as follows:

§ 440.17 Reciprocal waiver of claims requirements.

* * * * *

(b) The licensee or permittee and each of its contractors and subcontractors, each customer, and each customer's contractors and subcontractors, must enter into a reciprocal waiver of claims agreement under which each party waives and releases claims against all the other parties to the waiver and against any other customer, and agrees to assume financial responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, and to hold harmless and indemnify each other from bodily injury or property damage sustained by its employees, resulting from a licensed or permitted activity, regardless of fault.

(1) The licensee or permittee must extend the reciprocal waiver of claims requirements to each of its contractors and subcontractors involved in launch or reentry services, and each of its first-tier customers.

(2) Any first-tier customer must extend the reciprocal waiver of claims requirements to each of its contractors and subcontractors involved in launch or reentry services, and each of its customers.

(3) Any part 440 customer must extend the reciprocal waiver of claims requirements to each of its contractors and subcontractors involved in launch or reentry services, and each of its customers.

(c) For each licensed or permitted activity in which the United States, or its contractors and subcontractors, is involved or where property insurance is required under § 440.9(d), the Federal Aviation Administration of the Department of Transportation, the licensee or permittee, and each first-tier customer must enter into a reciprocal waiver of claims agreement. The reciprocal waiver of claims must be in the form set forth in appendix B of this part for a licensed activity, in appendix C of this part for a permitted activity, or in a form that otherwise provides all the same obligations and benefits. The reciprocal waiver of claims must provide that:

(1) Each party to the reciprocal waiver of claims, including the United States but only to the extent provided in legislation:

(i) Waives and releases claims it may have against each other party to the reciprocal waiver of claims, any customer, and against their respective contractors and subcontractors, for property damage it sustains and for bodily injury or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault;

(ii) Assumes responsibility for property damage it sustains and for bodily injury or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault. A licensee or permittee and each first-tier customer shall each hold harmless and indemnify each other, the United States, any other customer, and the contractors and subcontractors of each for bodily injury or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault; and

(iii) Extends the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, to its contractors and subcontractors involved in launch and reentry services, and, for each customer, to its contractors and subcontractors involved in launch and reentry services, and customers, by requiring them to waive and release all claims as follows:

(A) For each contractor and subcontractor of the licensee or permittee, all claims against any customer, the United States, and each of their respective contractors and subcontractors, and to agree to be responsible for property damage they sustain and to be responsible, hold harmless and indemnify any customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault;

(B) For each contractor and subcontractor of any customer, all claims against the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, and to agree to be responsible for property damage they sustain and to be responsible, hold harmless and indemnify the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault;

(C) For each contractor and subcontractor of the United States, all claims against the licensee or permittee, any customer, and each of their respective contractors and subcontractors, and to agree to be responsible for property damage they sustain and to be responsible, hold harmless and indemnify the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e);

(D) For each part 440 customer, all claims against the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors; and to agree to be responsible for property damage they sustain and to be responsible, hold harmless and indemnify the licensee or permittee, any other customer, the United States, and each of their respective contractors and subcontractors, for bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault; and

(2) For the following parties—

(i) The licensee or permittee must hold harmless and indemnify each first-tier customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them from and against liability, loss or damage arising out of claims that any of licensee's or permittee's contractors and subcontractors may have for property damage sustained by them and for bodily injury or property damage sustained by their employees, resulting from licensed or permitted activities and arising out of the indemnifying party's failure to implement properly the waiver requirement. The requirement of paragraph (c)(2)(i) of this section to hold harmless and indemnify the United States and its servants, agents, subsidiaries, employees and assignees, or any of them, does not apply when:

(A) Claims result from willful misconduct of the United States or its agents;

(B) Claims for property damage sustained by the United States or its contractors and subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e);

(C) For licensed activity, claims by a third party for bodily injury or property damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c), and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19; or

(D) The licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c).

(ii) Each first-tier customer must hold harmless and indemnify the licensee or permittee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that any of each first-tier customer's customers, contractors, or subcontractors, may have for property damage sustained by them and for bodily injury or property damage sustained by their employees, resulting from licensed or permitted activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(iii) The Federal Aviation Administration of the Department of Transportation on behalf of the United States, but only to the extent provided in legislation, must hold harmless and indemnify the licensee or permittee, each first-tier customer, any part 440 customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that contractors and subcontractors of the United States may have for property damage sustained by them and for bodily injury or property damage sustained by their employees, resulting from licensed or permitted activities and arising out of the indemnifying party's failure to implement properly the waiver requirement to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e).

(d) For each licensed or permitted activity in which the United States or its contractors and subcontractors are involved, the Federal Aviation Administration of the Department of Transportation and each space flight participant must enter into or have in place a reciprocal waiver of claims agreement. The reciprocal waiver of claims must be in the form set forth in appendix E of this part, or in a form that otherwise provides all the same obligations and benefits.

(1) The reciprocal waiver of claims must provide that each space flight participant:

(i) Waive and release claims he or she may have against the United States, and against each of its contractors and subcontractors, for bodily injury or property damage sustained by the space flight participant, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for bodily injury or property damage, sustained by the space flight participant, resulting from licensed or permitted activities, regardless of fault;

(iii) Hold harmless the United States, and its contractors and subcontractors, for bodily injury or property damage, sustained by the space flight participant, resulting from licensed or permitted activities, regardless of fault; and

(iv) Hold harmless and indemnify the United States and its servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims brought by anyone for property damage or bodily injury sustained by the space flight participant, resulting from licensed or permitted activities.

(2) The reciprocal waiver of claims must provide that the United States:

(i) Waive and release claims it may have against the space flight participant for property damage it sustains, and for bodily injury or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for property damage it sustains, and for bodily injury or property damage sustained by its own employees, resulting from licensed activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively;

(iii) Assume responsibility for property damage it sustains, resulting from permitted activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e);

(iv) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against the space flight participant, and to agree to be responsible, for any property damage they sustain and for any bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault; and

(v) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against the space flight participant, and to agree to be responsible, for any property damage they sustain, resulting from permitted activities, regardless of fault.

(e) For each licensed or permitted activity in which the United States or its contractors and subcontractors is involved, the Federal Aviation Administration of the Department of Transportation and each crew member must enter into or have in place a reciprocal waiver of claims agreement. The reciprocal waiver of claims must be in the form set forth in appendix D of this part, or in a form that otherwise provides all the same obligations and benefits.

(1) The reciprocal waiver of claims must provide that each crew member:

(i) Waive and release claims he or she may have against the United States, and against each of its contractors and subcontractors, for bodily injury or property damage sustained by the crew member, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for bodily injury or property damage, sustained by the crew member, resulting from licensed or permitted activities, regardless of fault;

(iii) Hold harmless the United States, and its contractors and subcontractors, for bodily injury or property damage, sustained by the crew member, resulting from licensed or permitted activities, regardless of fault; and

(iv) Hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims brought by anyone for property damage or bodily injury sustained by the crew member, resulting from licensed or permitted activities.

(2) The reciprocal waiver of claims must provide that the United States:

(i) Waive and release claims it may have against the crew member for property damage it sustains, and for bodily injury, including death, or property damage sustained by its own employees, resulting from licensed or permitted activities, regardless of fault;

(ii) Assume responsibility for property damage it sustains, and for bodily injury or property damage sustained by its own employees, resulting from licensed activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively;

(iii) Assume responsibility for property damage it sustains, resulting from permitted activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e);

(iv) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against the crew member and to agree to be responsible, for any property damage they sustain and for any bodily injury or property damage sustained by their own employees, resulting from licensed activities, regardless of fault; and

(v) Extend the requirements of the waiver and release of claims, and the assumption of responsibility to its contractors and subcontractors by requiring them to waive and release all claims they may have against the crew member and to agree to be responsible, for any property damage they sustain, resulting from permitted activities, regardless of fault.

(f) Any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify pursuant to this section does not apply to claims for bodily injury or property damage resulting from willful misconduct of any of the parties to the reciprocal waiver of claims, the contractors and subcontractors of any of the parties to the reciprocal waiver of claims, and in the case of licensee or permittee and customers and the contractors and subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

■ 4. Revise appendix B to part 440 to read as follows:

Appendix B to Part 440—Agreement for Waiver of Claims and Assumption of Responsibility for Licensed Activities

Part 1—Waiver of Claims and Assumption of Responsibility for Licensed Launch, Including Suborbital Launch

Subpart A—Waiver of Claims and Assumption of Responsibility for Licensed Launch, Including Suborbital Launch, With One Customer

This agreement is entered into this____day of________, by and among [Licensee] (the ‘‘Licensee’’), [Customer] (the ‘‘Customer’’) and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ‘‘Parties’’), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the ‘‘Regulations’’). This agreement applies to the launch of [Payload] payload on a [Launch Vehicle] vehicle at [Location of Launch Site]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities defined by § 440.3 of the Regulations.

Customer means the above-named Customer.

Part 440 Customer means a customer defined by § 440.3 of the Regulations, other than the above-named Customer.

License means License No.____issued on________, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

Licensee means the Licensee and any transferee of the Licensee under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Licensed Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Licensee, the United States, any other customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee, Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Licensee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and Customer shall each hold harmless and indemnify each other, the United States, any other customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Licensee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any Part 440 Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(b) Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors, Subcontractors, or customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee, Customer, any Part 440 Customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in paragraph 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, Customer or the United States of any claim by an employee of the Licensee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any Part 440 Customer, the Contractors and Subcontractors of any Part 440 Customer, and in the case of Licensee, Customer, any Part 440 Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: ______

Its: ______

Customer

By: ______

Its: ______

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: ______

Its: ______

Associate Administrator for Commercial Space Transportation

Subpart B—Waiver of Claims and Assumption of Responsibility for Licensed Launch, Including Suborbital Launch, With More Than One Customer

This agreement is entered into this____day of________, by and among [Licensee] (the "Licensee"); [List of Customers]; (with [List of Customers] hereinafter referred to in their individual capacity as "Customer"); and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to the launch of [Payload] payload on a [Launch Vehicle] vehicle at [Location of Launch Site].

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities defined by § 440.3 of the Regulations.

Customer means each above-named Customer.

Part 440 Customer means a customer defined by § 440.3 of the Regulations, other than the above-named Customer.

License means License No.____issued on________, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

Licensee means the Licensee and any transferee of the Licensee under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Licensed Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) Each Customer hereby waives and releases claims it may have against Licensee, the United States, any other customer, and each of their respective Contractors and Subcontractors for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee, each Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Licensee and each Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and each Customer shall each hold harmless and indemnify each other, the United States, any other customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Each Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, each Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Licensee shall hold harmless and indemnify each Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any part 440 customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(b) Each Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that each Customer's Contractors, Subcontractors, or customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee, each Customer, any Part 440 Customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in paragraph 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, any Customer or the United States of any claim by an employee of the Licensee, any Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any Part 440 Customer, the Contractors and Subcontractors of any Part 440 Customer, and in the case of Licensee, each Customer, any Part 440 Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) References herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: ____________________________

Its: ____________________________

Customer 1

By: ____________________________

Its: ____________________________

[Signature lines for each additional customer]

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: ____________________________

Its: ____________________________

Associate Administrator for Commercial Space Transportation

Part 2—Waiver of Claims and Assumption of Responsibility for Licensed Reentry

Subpart A—Waiver of Claims and Assumption of Responsibility for Licensed Reentry With One Customer

This Agreement is entered into this ____ day of ________, by and among [Licensee] (the "Licensee"), [Customer] (the "Customer"), and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to the reentry of the [Payload] payload on a [Reentry Vehicle] vehicle.

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities defined by § 440.3 of the Regulations.

Customer means the above-named Customer.

Part 440 Customer means a customer defined by § 440.3 of the Regulations, other than the above named Customer.

License means License No. ____ issued on ________, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

Licensee means the Licensee and any transferee of the Licensee under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Licensed Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Licensee, the United States, any other customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee, Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Licensee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

Licensee and Customer shall each hold harmless and indemnify each other, the United States, any other customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e) of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Licensee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any Part 440 Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(b) Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them from and against liability, loss or damage arising out of claims that Customer's Contractors, Subcontractors, or customers may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee, Customer, any Part 440 Customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e) of the Regulations.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in paragraph 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, Customer or the United States of any claim by an employee of the Licensee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any Part 440 Customer, the Contractors and Subcontractors of any Part 440 Customer, and in the case of Licensee, Customer, any Part 440 Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

In Witness Whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: ______

Its: ______

Customer

By: ______

Its: ______

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: ______

Its: ______

Associate Administrator for Commercial Space Transportation

Subpart B—Waiver of Claims and Assumption of Responsibility for Licensed Reentry With More Than One Customer

This agreement is entered into this ___ day of ______, by and among [Licensee] (the "Licensee"); [List of Customers] (with [List of Customers] hereinafter referred to in their individual capacity as "Customer"); and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to the reentry of [Payload] payload on a [Reentry Vehicle] vehicle.

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities described in § 440.3 of the Regulations.

Customer means each above-named Customer.

Part 440 Customer means a customer defined by § 440.3 of the Regulations, other than the above-named customer.

License means License No. ____ issued on ________, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee, including all license orders issued in connection with the License.

Licensee means the Licensee and any transferee of the Licensee under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Licensed Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Licensee hereby waives and releases claims it may have against each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) Each Customer hereby waives and releases claims it may have against Licensee, the United States, any other customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Licensee, each Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Licensee and each Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault. Licensee and each Customer shall each hold harmless and indemnify each other, the United States, any other customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Licensee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) Each Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Licensee, the United States, and any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Licensee, each Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Licensee shall hold harmless and indemnify each Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any Part 440 Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Licensee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(b) Each Customer shall hold harmless and indemnify Licensee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; and the United States and any other customer as defined by § 440.3 its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that each Customer's Contractors, Subcontractors, and customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(c) To the extent provided in advance in an appropriations law or to the extent there is enacted additional legislative authority providing for the payment of claims, the United States shall hold harmless and indemnify Licensee, each Customer, any Part 440 Customer, and their respective directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Contractors and Subcontractors of the United States may have for Property Damage sustained by them, and for Bodily Injury or Property Damage sustained by their employees, resulting from Licensed Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Licensee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Licensed Activities, regardless of fault, except to the extent that: (i) As provided in paragraph 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Licensee, any Customer or the United States of any claim by an employee of the Licensee, any Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any Part 440 Customers, the Contractors and Subcontractors of any Part 440 Customer, and in the case of Licensee, each Customer, any Part 440 Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) References herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Licensee

By: ______________________________
Its: ______________________________

Customer 1

By: ______________________________
Its: ______________________________

[Signature lines for each additional customer]

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: ______________________________
Its: ______________________________

Associate Administrator for Commercial Space Transportation

■ 5. Revise appendix C to part 440 to read as follows:

Appendix C to Part 440—Agreement for Waiver of Claims and Assumption of Responsibility for Permitted Activities

Part 1—Waiver of Claims and Assumption of Responsibility for Permitted Activities With No Customer

This agreement is entered into this ____ day of ________, by and between [Permittee] (the "Permittee") and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to [describe permitted activity]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities defined by § 440.3 of the Regulations.

Permit means Permit No.______issued on ___________, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Permittee, including all permit orders issued in connection with the Permit.

Permittee means the holder of the Permit issued under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Permitted Activities. Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Permittee hereby waives and releases claims it may have against the United States, and against its Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States hereby waives and releases claims it may have against Permittee and against its Contractors and Subcontractors, for Property Damage it sustains resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations.

3. Assumption of Responsibility

(a) Permittee shall be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault. Permittee shall hold harmless and indemnify the United States, and the Contractors and Subcontractors of the United States, for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Permittee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against the United States, and against the Contractors and Subcontractors of the United States, and to agree to be responsible for Property Damage they sustain and to be responsible, hold harmless, and indemnify the United States, and the Contractors and Subcontractors of the United States, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Permittee, and against the Contractors and Subcontractors of Permittee, and to agree to be responsible, for any Property Damage they sustain, resulting from Permitted Activities, regardless of fault, to the extent that claims they would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations.

5. Indemnification

Permittee shall hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims that Permittee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

6. Assurances Under 51 U.S.C. 50914(e)

(a) Permittee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any Part 440

Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Permittee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities.

(b) Customer shall hold harmless and indemnify Permittee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors, Subcontractors, and customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Permittee or the United States of any claim by an employee of the Permittee or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility, or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, and in the case of Permittee and its Contractors and Subcontractors, the directors, officers, agents, and employees of any of the foregoing, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Permittee

By: ____________________

Its: ____________________

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: ____________________

Its: ____________________

Associate Administrator for Commercial Space Transportation

Part 2—Waiver of Claims and Assumption of Responsibility for Permitted Activities With One Customer

This agreement is entered into this __ day of ____, by and among [Permittee] (the "Permittee"), [Customer] (the "Customer") and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to [describe permitted activity]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities defined by § 440.3 of the Regulations.

Customer means the above-named Customer.

Part 440 Customer means a customer defined by § 440.3 of the Regulations, other than the above-named customer.

Permit means Permit No. __ issued on ____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Permittee, including all permit orders issued in connection with the Permit.

Permittee means the holder of the Permit issued under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Permitted Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Permittee hereby waives and releases claims it may have against Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) Customer hereby waives and releases claims it may have against Permittee, the United States, any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Permittee, Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Permittee and Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault. Permittee and Customer shall each hold harmless and indemnify each other, the United States, any other customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Permittee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(b) Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Permittee, the United States, any other customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Permittee, the United States, any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Permittee, Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Permittee shall hold harmless and indemnify Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any Part 440 Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Permittee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(b) Customer shall hold harmless and indemnify Permittee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Customer's Contractors, Subcontractors, and customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Permittee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Permitted Activities, regardless of fault, except to the extent that: (i) As provided in paragraph 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Permittee, Customer or the United States of any claim by an employee of the Permittee, Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any Part 440 Customer, the Contractors and Subcontractors of any Part 440 Customer, and in the case of Permittee, Customer, any Part 440 Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Permittee

By: ________________________________
Its: ________________________________

Customer

By: ________________________________
Its: ________________________________

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: ________________________________
Its: ________________________________

Associate Administrator for Commercial Space Transportation

Part 3—Waiver of Claims and Assumption of Responsibility for Permitted Activities With More Than One Customer

This agreement is entered into this __ day of ____, by and among [Permittee] (the "Permittee"); [List of Customers]; (with [List of Customers] hereinafter referred to in their individual capacity as "Customer"); and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the "Parties"), to implement the provisions of § 440.17(c) of the Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III (the "Regulations"). This agreement applies to [describe permitted activity].

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Contractors and Subcontractors means entities defined by § 440.3 of the Regulations.

Customer means each above-named Customer.

Part 440 Customer means a customer defined by § 440.3 of the Regulations, other than the above-named Customer.

Permit means Permit No. __ issued on ____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Permittee, including all permit orders issued in connection with the Permit.

Permittee means the holder of the Permit issued under 51 U.S.C. Subtitle V, ch. 509.

United States means the United States and its agencies involved in Permitted Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, ch. 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, ch. 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Permittee hereby waives and releases claims it may have against each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) Each Customer hereby waives and releases claims it may have against Permittee, the United States, any other customer, and each of their Contractors and Subcontractors, for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(c) The United States hereby waives and releases claims it may have against Permittee, each Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Property Damage it sustains, and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

3. Assumption of Responsibility

(a) Permittee and each Customer shall each be responsible for Property Damage it sustains and for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault. Permittee and each Customer shall each hold harmless and indemnify each other, the United States, any other customer, and the Contractors and Subcontractors of each, for Bodily Injury or Property Damage sustained by its own employees, resulting from Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) Permittee shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(a) and 3(a), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify each Customer, the United States, any Part 440 Customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(b) Each Customer shall extend the requirements of the waiver and release of claims, and the assumption of responsibility, hold harmless, and indemnification, as set forth in paragraphs 2(b) and 3(a), respectively, to its customers, Contractors, and Subcontractors, by requiring them to waive and release all claims they may have against Permittee, the United States, any other customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for Property Damage they sustain and to be responsible, hold harmless and indemnify Permittee, the United States, any other customer, and each of their respective Contractors and Subcontractors, for Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault.

(c) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(c) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Permittee, each Customer, any Part 440 Customer, and each of their respective Contractors and Subcontractors, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury or Property Damage sustained by their own employees, resulting from Permitted Activities, regardless of fault, to the extent that claims they would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) and (e), respectively, of the Regulations.

5. Indemnification

(a) Permittee shall hold harmless and indemnify each Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any Part 440 Customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that Permittee's Contractors and Subcontractors may have for Property Damage sustained by them and for Bodily Injury *or Property Damage sustained by their employees, resulting from Permitted Activities* and arising out of the indemnifying party's failure to implement properly the waiver requirement.

(b) Each Customer shall hold harmless and indemnify Permittee and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them; the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them; and any other customer and its directors, officers, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims that each Customer's Contractors, Subcontractors, and customers, may have for Property Damage sustained by them and for Bodily Injury or Property Damage sustained by their employees, resulting from Permitted Activities and arising out of the indemnifying party's failure to implement properly the waiver requirement.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Permittee shall hold harmless and indemnify the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury or Property Damage, resulting from Permitted Activities, regardless of fault, except to the extent that: (i) As provided in paragraph 7(b) of this Agreement, claims result from willful misconduct of the United States or its agents; (ii) claims for Property Damage sustained by the United States or its Contractors and Subcontractors exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(e) of the Regulations; (iii) claims by a Third Party for Bodily Injury or Property Damage exceed the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations, and do not exceed $1,500,000,000 (as adjusted for inflation after January 1, 1989) above such amount, and are payable pursuant to the provisions of 51 U.S.C. 50915 and § 440.19 of the Regulations; or (iv) Licensee has no liability for claims exceeding $1,500,000,000 (as adjusted for inflation after January 1, 1989) above the amount of insurance or demonstration of financial responsibility required under § 440.9(c) of the Regulations.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by Permittee, any Customer or the United States of any claim by an employee of the Permittee, any Customer or the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless and indemnify herein shall not apply to claims for Bodily Injury or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, any Part 440 Customer, the Contractors and Subcontractors of any Part 440 Customer, and in the case of Permittee, each Customer, any Part 440 Customer, and the Contractors and Subcontractors of each of them, the directors, officers, agents and employees of any of the foregoing, and in the case of the United States, its agents.

(c) References herein to Customer shall apply to, and be deemed to include, each such customer severally and not jointly.

(d) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

Permittee

By: ____________________
Its: ____________________

Customer 1

By: ____________________
Its: ____________________

[Signature lines for each additional customer]

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: ____________________
Its: ____________________

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on July 25, 2016.

Michael P. Huerta,

Administrator.

[FR Doc. 2016–18765 Filed 8–17–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 301, and 602

[TD 9782]

RIN 1545–BK06

Tax on Certain Foreign Procurement

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 5000C of the Internal Revenue Code relating to the 2 percent tax on payments made by the U.S. government to foreign persons pursuant to certain contracts. The regulations affect U.S. government acquiring agencies and foreign persons providing certain goods or services to the U.S. government pursuant to a contract. This document also contains final regulations under section 6114, with respect to foreign persons claiming an exemption from the 2 percent tax under an income tax treaty.

DATES: *Effective Date:* These regulations are effective on August 18, 2016.

Applicability Date: For dates of applicability, see § 1.5000C–7 and § 301.6114–1(e)(2).

FOR FURTHER INFORMATION CONTACT: Kate Hwa at (202) 317–6934, and for questions related to tax treaties and the regulations under section 6114, Rosy Lor at (202) 317–6933, (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On January 2, 2011, section 301 of the James Zadroga 9/11 Health and Compensation Act of 2010, Public Law 111–347 (the Act), 124 Stat. 3623, added section 5000C to the Internal Revenue Code (Code). Section 5000C(a) imposes on any foreign person that receives a specified Federal procurement payment a tax equal to 2 percent of the amount such payment. Section 5000C(b) defines the term *specified Federal procurement payment* as any payment made pursuant to a contract with the Government of the United States (U.S. government) for goods or services if the goods are manufactured or produced or the services are provided in any country that is not a party to an international procurement agreement with the United States. Section 301(a)(3) of the Act provides that section 5000C applies to payments received pursuant to contracts entered into on and after January 2, 2011. Additionally, section 301(b)(1)(c) of the Act states that this section must be applied in a manner consistent with U.S. obligations under international agreements. Section 5000C(d)(1) provides that the amount deducted and withheld under chapter 3 shall be increased by the amount of tax imposed under section 5000C.

On April 22, 2015, the Department of Treasury (Treasury Department) and the Internal Revenue Service (IRS) published in the **Federal Register** (80 FR 22449) a notice of proposed rulemaking (REG–103281–11) (NPRM) under sections 5000C and 6114 (the proposed regulations). The regulations set forth a number of exemptions from the tax and provided procedures for collecting the tax. Notice 2015–35, 2015–18 I.R.B. 943, issued contemporaneously with the proposed regulations, provided a list of income tax treaties in effect that prevented the imposition of the tax. No public hearing was requested or held. Written comments on the proposed regulations were received and are available at *www.regulations.gov* or upon request. After consideration of the comments, the proposed regulations are adopted as amended by this Treasury decision. The revisions are discussed below.

Explanation and Summary of Comments

1. Payments by Contracting Parties to Subcontractors

A commenter asked for clarification that the proposed regulations apply only to payments made by the U.S. government to direct (prime) contractors with the U.S. government, and not to payments made by prime contractors pursuant to subcontracts. Consistent with the proposed regulations, the final regulations provide section 5000C imposes the tax on any foreign contracting party, which means a foreign person that is a party to a contract with the U.S. government that was entered into on or after January 2, 2011. Therefore, the final regulations do not generally impose the tax on a subcontractor that is not party to a contract with the U.S. government. For example, if an acquiring agency contracts with a domestic corporation (prime contractor) for goods or services, and the prime contractor separately contracts with a foreign subcontractor for goods and services to be provided under the contract, section 5000C will not ordinarily apply to payments by the prime contractor to its foreign subcontractor that relate to those goods or services.

However, the activities of a subcontractor are taken into account when determining the country in which goods are manufactured or produced or in which services are provided under § 1.5000C–1(e). Furthermore, the final regulations retain the rules in the proposed regulations that payments received by a nominee or agent on behalf of a contracting party are considered to be received by that contracting party. For the definition of a contracting party, see § 1.5000C–1(c)(4). The final regulations also retain the anti-abuse rule in § 1.5000C–5 that in certain circumstances may treat a subcontractor that is a foreign person as being liable for tax under section 5000C.

2. Exemption for Certain Foreign Humanitarian Assistance Contracts

The United States Agency for International Development (USAID) regularly enters into contracts with foreign persons for goods and services for purposes of implementing USAID's development projects and programs in a host country. The proposed regulations do not provide relief from the tax under section 5000C for payments made pursuant to some of these contracts. The Treasury Department and the IRS have concluded that it is appropriate to exempt from the tax payments made to foreign contracting parties that USAID engages to execute its development projects and programs in a host country. In this context, the U.S. government is not procuring goods and services for its own benefit, but rather to provide humanitarian assistance for the benefit of the host countries. As a result, the final regulations add an exemption under which section 5000C does not apply to a contract for the purpose of obtaining goods or services described in or authorized under certain specified statutes that are for the purpose of providing foreign humanitarian assistance when the acquiring agency determines that the payment is for the purpose of providing foreign humanitarian assistance. This exemption generally applies to a contract entered into by an acquiring agency with a foreign contracting party to obtain goods or services for purposes of implementing an agreement between the United States and a foreign country or a group of countries to provide foreign humanitarian assistance as authorized under the Food for Peace Act (7 U.S.C. 1691, *et seq.*) and the Foreign Assistance Act of 1961 (22 U.S.C. 2151, *et seq.*).

Similarly, this exemption also generally applies to contacts providing foreign humanitarian assistance under the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601 *et seq.*), the Freedom Support Act of 1992 (22 U.S.C. 5801 *et seq.*), and the SEED Act of 1989 (22 U.S.C. 5401 *et seq.*), and to transportation of humanitarian relief supplies to foreign countries described in 10 U.S.C. 402, foreign disaster assistance described in 10 U.S.C. 404, humanitarian demining assistance described in 10 U.S.C. 407, excess non-lethal supplies for humanitarian relief purposes described in 10 U.S.C. 2557, and transportation of humanitarian relief and for other humanitarian purposes described in 10 U.S.C. 2561. *See* § 1.5000C–1(d)(4). A corresponding change is made to the withholding rules to take into account this exemption. *See* § 1.5000C–2(b)(6).

3. Procurement Not Pursuant to the Federal Acquisition Regulations

A commenter noted that it was unclear whether payments by acquiring agencies under contracts that are not entered into pursuant to the Federal Acquisition Regulations (FAR) are subject to tax under section 5000C. The FAR is the body of rules that generally governs acquisitions and contracting procedures for federal agencies. *See* 48 CFR Chapter 1. Although the final regulations utilize certain concepts and definitions contained in the FAR, neither the Act nor the final regulations are limited to contracts executed pursuant to the FAR. Thus, while the term "contract" in the proposed and final regulations uses the FAR definition of the term "contract", it can nevertheless include a contract that is not executed under the FAR. A sentence was added to the definition of contract in the final regulations to clarify this point.

4. Definition of International Procurement Agreement and Least Developed Countries

The General Explanation of Tax Legislation prepared by the Staff of the Joint Committee on Taxation accompanying section 5000C explains that parties engaged in cross-border transactions are required to comply with relevant trade agreements of the jurisdictions in which they operate. *See* Staff of the Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in the 111th Congress (JCS–2–11), at 694, March 16, 2011 (Joint Committee Explanation). In describing these obligations, the Joint Committee Explanation listed the Government Procurement Agreement (GPA) that is an annex to the World Trade Organization agreement, as well as the government procurement obligations of U.S. free trade agreements. *Id.* Accordingly, the proposed regulations defined the term *international procurement agreement* as the World Trade Organization GPA (WTO GPA) within the meaning of 48 CFR 25.400(a)(1) and any free trade agreement to which the United States is a party that includes government procurement obligations that provide appropriate competitive government procurement opportunities to U.S. goods, services, and suppliers.

One commenter noted that the FAR provides that eligible products from WTO GPA and free trade agreement countries are entitled to certain nondiscriminatory treatment, and that 48 CFR 25.404 expands this nondiscriminatory treatment to include least developed countries described in 48 CFR 25.400(a)(3). The commenter requested that the final regulations also expand the definition of international procurement agreement to include goods manufactured or produced or services provided in a least developed country.

The final regulations do not adopt this comment for two reasons. First, the proposed regulations referred to 48 CFR 25.400(a)(1) in order to utilize a term that was widely understood in the context of government procurement but was not intended to incorporate any related provisions of the FAR. Second, the Joint Committee Explanation indicates that Congress intended the exemption under section 5000C(b) related to international procurement agreements to be limited to signatories of free trade agreements with government procurement obligations or procurement agreements.

5. Definition of International Agreements

Section 301(c) of the Act requires that section 5000C be applied in a manner consistent with the United States' obligations under international agreements. A commenter indicated that the proposed regulations limit international agreements that may affect the application of section 5000C to income tax treaties and requested that final regulations include other international agreements that may impact taxation. In particular, the commenter indicated that the Vienna Convention on Consular Relations and bilateral framework agreements negotiated and administered by USAID contain tax provisions.

The final regulations do not adopt this request. The specific international agreements to which the commenter referred prohibit host country taxation of expenditures of a U.S. consulate or amounts provided through USAID programs but do not limit the United States' taxing rights. Consequently, these international agreements do not provide relief from the tax imposed under section 5000C. Furthermore, in identifying the income tax treaties that provide relief from the tax under section 5000C, the regulations do not preclude a foreign contracting party from claiming relief from the tax under any other applicable international agreement.

6. Simplified Acquisition Threshold

The proposed regulations provide that that the tax imposed under section 5000C will not apply to payments for purchases under the simplified acquisition procedures described in the FAR that do not exceed the simplified acquisition threshold in 48 CFR 2.101. One commenter recommended that the determination of the $150,000 simplified acquisition threshold should be computed on an annual basis rather than on a contract-by-contract basis. The final regulations do not adopt this suggestion because the Treasury Department and the IRS have determined that it is generally more administrable to make a determination of the threshold amount when entering into a particular contract. However, as described in *7. Personal Service Contacts* of this preamble, this suggestion has been adopted in the limited context of personal service contracts.

7. Personal Service Contracts

A commenter requested a new exemption from the tax for service contracts entered into with individuals (personal service contracts). The commenter further stated that some acquiring agencies do not use the FAR to procure personal services from individuals. As such, the commenter stated that these personal service contracts do not fall within the simplified acquisition procedures of the FAR but typically are for an amount less than $150,000 per contract. The commenter also suggested that the threshold amount of personal service contracts with individuals would be more appropriately determined on an annual (rather than a per contract) basis.

Section 5000C applies to contracts for the provision of services, so the final regulations do not provide an exemption for all personal service contracts. However, the Treasury Department and the IRS have decided that it is appropriate to extend the simplified acquisition exemption to personal service contracts, whether or not they are not executed pursuant to the FAR. Further, the Treasury Department and the IRS agree with the comment that when applying this exemption, the amount paid for personal services under the contracts should be determined on an annual basis. Accordingly, the final regulations provide an exemption in § 1.5000C–1(d)(3) for payments for services provided by, and under contracts with, a single individual in which the payments do not exceed on an annual basis the simplified acquisition threshold as described in 48 CFR 2.101 for all years of the contract. A corresponding change is made to the withholding rules to take into account this exemption. *See* § 1.5000C–2(b)(5).

8. Definition of Emergency Acquisition

Proposed § 1.5000C–1(d)(2) exempts payments pursuant to contracts awarded for certain emergency acquisitions. One commenter suggested that this exemption be broadened to include contracts that involve other agency acquisitions of importance to the government, such as contracts for acquisitions determined to be in the national interest by the acquiring agency. The final regulations do not adopt this comment for two reasons. First, the Treasury Department and the IRS have concluded that the more limited exemption in the proposed regulations appropriately balances compliance with section 5000C with the government's need to procure goods and services in certain emergency situations. Second, the commenter's suggestion would introduce a subjective, potentially overbroad exemption from the tax imposed by section 5000C.

9. Credit Card Payments

One commenter requested a new exemption from the section 5000C tax for payments made with a credit card. The commenter indicated that applying the section 5000C tax to payments made with a credit card would be difficult to administer because of the volume of these transactions.

The final regulations do not adopt this suggestion for several reasons. First, in most cases, payments made with a credit card will be in an amount that will fall within the exemption for payments for simplified acquisitions, which applies to purchases under the simplified acquisition procedures described in the FAR that do not exceed the simplified acquisition threshold as described in 48 CFR 2.101. *See* § 1.5000C–1(d)(1). Second, in cases in which payments made with a credit card do not meet the exemption for simplified acquisitions, adopting this comment would allow foreign contracting parties to avoid the tax by receiving payment with a credit card for large amounts that should be subject to the tax.

10. Payments Only in Part for Goods or Services

A commenter indicated that, in some circumstances, a contract may be for goods or services but also include payments that are not for goods or services, giving as an example payments to reimburse taxes incurred by the contracting party. In response to the comment, the withholding steps in the final regulations clarify that acquiring agencies should not withhold to the extent that a payment is for something other than goods or services. *See* § 1.5000C–2(b)(1). However, this clarification should not be read to mean that payments to reimburse taxes incurred by the contracting party in providing goods or services are anything other than payments for those goods or services.

11. Form W–14, "Certificate of Foreign Contracting Party Receiving Federal Procurement Payments"

The proposed regulations provided that a foreign contracting party must submit a "Section 5000C Certificate" that provides all of the information required by the proposed regulations to claim an exemption from section 5000C. The proposed regulations also contained a model Section 5000C Certificate. Simultaneous with the publication of the final regulations, the IRS is publishing Form W–14, "Certificate of Foreign Contracting Party Receiving Federal Procurement Payments," which may be used as the Section 5000C Certificate. Accordingly, the final regulations do not contain a model Section 5000C Certificate but rather provide that a foreign person may use Form W–14 as its Section 5000C Certificate provided that it includes all the necessary information. *See* §§ 1.5000C–1(c)(14) and 1.5000C–2(d)(7).

Notice 2015–35 listed the countries that had entered into qualified income tax treaties with the United States as of the date of its publication. The instructions to Form W–14, issued contemporaneously with the publication of these final regulations, identify income tax treaties in force, as of the date of the issuance of the form, that are qualified income tax treaties. When new income tax treaties come into force, foreign persons and acquiring agencies should review IRS Forms, Instructions, Publications or other media (including *www.irs.gov*) for an updated list of qualified income tax treaties, rather than Notice 2015–35.

12. Change in Circumstances

Section 1.5000C–2(d)(6) provides that a foreign contracting party must submit a revised Section 5000C Certificate within 30 days of a change in circumstances that causes the information in a Section 5000C Certificate held by the acquiring agency to be incorrect with respect to the acquiring agency's determination of whether to withhold or the amount of withholding under Section 5000C. One commenter suggested that an example would be helpful to illustrate this rule. In response to this comment, an example was added to illustrate the withholding obligation of an acquiring agency when it receives a revised Section 5000C Certificate due to a change in circumstances. *See* § 1.5000C–6, *Example 6.*

13. Effective Date of Section 5000C and the Final Regulations

Comments recommended that the final regulations delay the applicability of the tax imposed by section 5000C to contracts entered into on or after the date of the publication of the final regulations. Alternatively, one commenter recommended that the final regulations delay the applicability of the tax until the issuance of final amendments to the FAR as promulgated by the Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA), if any, that may take into account these final regulations. This commenter reasoned that a delay in the application of the final regulations would allow the necessary time needed to amend the FAR in order to take into account the rules provided in the final regulations. While the DoD, GSA, and NASA have amended some sections of the FAR to reflect the enactment of section 5000C (see 48 CFR 31.205–41(b), 52.229–3(b)(2), 52.229–4(b)(2), 52.229–6(c)(2), and 52.229–7(b)(2)), commenters stated that other sections of the FAR (such as CFR 52.229–3) will also need to be amended.

Section 301(a)(3) of the Act specifically provides that the tax imposed by section 5000C applies to payments received pursuant to contracts entered into on and after January 2, 2011, indicating a clear Congressional intent as to the effective date. Further, the Act does not require Treasury regulations or FAR amendments to be applicable before the requirements of the statute take effect. Thus, the final regulations do not adopt this comment and confirm the statutory effective date.

Consistent with the proposed regulations, the final regulations apply on and after the date that is 90 days after the date they are published as final regulations in the **Federal Register** (applicability date). However, contracting parties and acquiring agencies may rely upon the rules in the final regulations before the applicability date.

Under the Act, while acquiring agencies have an obligation to withhold, the foreign contracting parties remain liable for the tax if withholding does not fully satisfy the foreign person's tax liability. The Treasury Department and the IRS are aware that some foreign persons subject to statutory obligations under section 5000C may have deferred compliance actions pending the applicability of the final regulations. The Treasury Department and the IRS have concluded that 90 days is sufficient for these foreign persons to satisfy their tax and filing obligations with respect to section 5000C for prior periods. Accordingly, § 1.5000C–7 provides that if a foreign contracting party fully satisfies its tax and filing obligations under section 5000C with respect to any payments received in tax years ending before the applicability date of the regulations on or before the later of the applicability date of the final regulations or the due date for the foreign person's income tax return for the year in which the payment was received in a manner consistent with the final regulations, penalties will not be asserted on the foreign contracting parties with respect to those payments or returns. For example, assume a foreign corporation received a single specified Federal procurement payment during its tax year ending on December 31, 2013 that is not described in any of the exemptions in these final regulations, and the payment was not withheld upon. If the corporation files Form 1120–F, ''U.S. Income Tax Return of a Foreign Corporation,'' for 2013 and pays the tax imposed under section 5000C in the manner described in § 1.5000C–4(d) before the applicability date of the final regulations, penalties will not be asserted with respect to that payment or return. However, the final regulations do not relieve a foreign person of any applicable rules relating to interest under Subtitle F.

Additionally, for purposes of section 6114 and the regulations thereunder, if a foreign contracting party has received a payment exempt from tax under a qualified income tax treaty before the effective date of the final regulations under section 5000C, reporting is waived if the foreign contracting party has properly relied on Notice 2015–35. *See* § 301.6114–1(e)(2).

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. It is hereby certified that the collection of information contained in this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The collection of information requirement in the regulations will not have a significant economic impact on a substantial number of small entities because a limited number of foreign contracting parties that are small entities will be subject to the tax, in part because the final regulations provide exemptions for simplified acquisitions and for certain personal service contracts. Because section 5000C(a) applies to foreign persons regardless of the size of the entity, a limited number of small foreign entities that received specified Federal procurement payments are affected by the regulation. Pursuant to section 7805(f) of the Internal Revenue Code, the NPRM preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Kate Hwa and Rosy Lor, Office of Associate Chief Counsel (International). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1, 301, and 602 are amended as follows:

PART I—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.5000C–1 is also issued under 26 U.S.C. 5000C

Section 1.5000C–2 is also issued under 26 U.S.C. 5000C

Section 1.5000C–3 is also issued under 26 U.S.C. 5000C

Section 1.5000C–4 is also issued under 26 U.S.C. 5000C

Section 1.5000C–5 is also issued under 26 U.S.C. 5000C

Section 1.5000C–6 is also issued under 26 U.S.C. 5000C

■ **Par. 2.** An undesignated center heading is added following § 1.5000A–5 to read as follows:

Tax on Certain Foreign Procurement

■ **Par. 3.** Section 1.5000C–0 is added after the undesignated center heading to read as follows:

§ 1.5000C–0 Outline of regulation provisions for section 5000C.

This section lists the captions contained in §§ 1.5000C–1 through 1.5000C–7.

§ 1.5000C–1 Tax on specified Federal procurement payments.

(a) Overview.
(b) Imposition of tax.
(c) Definitions.
(d) Exemptions.
(1) Simplified acquisitions.
(2) Emergency acquisitions.
(3) Certain personal service contracts.
(4) Certain foreign humanitarian assistance contracts.
(5) Certain international agreements.
(6) Goods manufactured or produced or services provided in the United States.
(7) Goods manufactured or produced or services provided in a country that is a party to an international procurement agreement.
(e) Country in which goods are manufactured or produced or services provided.
(1) Goods manufactured or produced.
(2) Provision of services.
(3) Allocation of total contract price to determine the nonexempt amount.
(4) Reduction or elimination of withholding by an acquiring agency.

§ 1.5000C–2 Withholding on specified Federal procurement payments.

(a) In general.
(b) Steps in determining the obligation to withhold under section 5000C.
(1) Determine whether the payment is pursuant to a contract for goods or services.
(2) Determine whether the payment is made pursuant to a contract with a U.S. person.
(3) Determine whether the payment is for purchases under the simplified acquisition procedures.
(4) Determine whether the payment is for emergency acquisitions.
(5) Determine whether the payment is for personal services under the simplified acquisition threshold.
(6) Determine whether the payment is pursuant to a foreign humanitarian assistance contract.
(7) Determine whether the foreign contracting party is entitled to relief pursuant to an international agreement.
(8) Determine whether the contract is for goods manufactured or produced or services provided in the United States or in a foreign country that is a party to an international procurement agreement.
(9) Compute amounts to withhold.
(10) Deposit and report amounts withheld.
(c) Determining whether the contracting party is a U.S. person.
(1) In general.
(2) Determination based on Taxpayer Identification Number (TIN).
(3) Determination based on the Form W–9.
(4) Contracting party treated as a foreign contracting party.
(d) Withholding when a foreign contracting party submits a Section 5000C Certificate.
(1) In general.
(2) Exemption for a foreign contracting party entitled to the benefit of relief pursuant to certain international agreements.
(3) Exemption when goods are manufactured or produced or services provided in the United States, or in a foreign country that is a party to an international procurement agreement.
(4) Information required for Section 5000C Certificate.

(5) Validity period of Section 5000C Certificate.
(6) Change in circumstances.
(7) Form W–14.
(8) Time for submitting Section 5000C Certificate.
(e) Offset for underwithholding or overwithholding.
(1) In general.
(2) Underwithholding.
(3) Overwithholding.

§ 1.5000C–3 Payment and returns of tax withheld by the acquiring agency.

(a) In general.
(b) Deposit rules.
(1) Acquiring agency with a chapter 3 deposit requirement treats amounts withheld as under chapter 3.
(2) Acquiring agency with no chapter 3 filing obligation deposits withheld amounts monthly.
(c) Return requirements.
(1) In general.
(2) Classified or confidential contracts.
(d) Special arrangement for certain contracts.

§ 1.5000C–4 Requirement for the foreign contracting party to file a return and pay tax, and procedures for the contracting party to seek a refund.

(a) In general.
(b) Tax obligation of foreign contracting party independent of withholding.
(c) Return of tax by the foreign contracting party.
(d) Time and manner of paying tax.
(e) Refund requests when amount withheld exceeds tax liability.

§ 1.5000C–5 Anti-abuse rule.

§ 1.5000C–6 Examples.

§ 1.5000C–7 Effective/applicability date.

■ **Par. 4.** Sections 1.5000C–1 through 1.5000C–7 are added to read as follows:

§ 1.5000C–1 Tax on specified Federal procurement payments.

(a) *Overview.* This section provides definitions and general rules relating to the imposition of, and exemption from, the tax on specified Federal procurement payments under section 5000C. Section 1.5000C–2 provides rules concerning withholding under section 5000C(d)(1), including the steps that must be taken to determine the obligation to withhold and whether an exemption from withholding applies. Section 1.5000C–3 provides the time and manner for depositing the amounts withheld under section 5000C and the related reporting requirements. Section 1.5000C–4 contains the rules that apply to a foreign contracting party that must pay and report the tax under section 5000C when the tax obligation under section 5000C is not fully satisfied by withholding, as well as procedures by which a contracting party may seek a refund when the amount withheld exceeds its tax liability under section 5000C. Section 1.5000C–5 contains an anti-abuse rule. Section 1.5000C–6 contains examples illustrating the principles of §§ 1.5000C–1 through 1.5000C–4. Finally, § 1.5000C–7 contains the effective/applicability date for §§ 1.5000C–1 through 1.5000C–7.

(b) *Imposition of tax.* Except as otherwise provided, section 5000C imposes on any foreign contracting party a tax equal to 2 percent of the amount of a specified Federal procurement payment. In general, the tax imposed under section 5000C applies to specified Federal procurement payments received pursuant to contracts entered into on and after January 2, 2011. Specified Federal procurement payments received by a nominee or agent on behalf of a contracting party are considered to be received by that contracting party. The tax imposed under section 5000C is to be applied in a manner consistent with U.S. obligations under international agreements. Payments for the purchase or lease of land or an interest in land are not subject to the tax imposed under section 5000C.

(c) *Definitions.* Solely for purposes of section 5000C and §§ 1.5000C–1 through 1.5000C–7, the following definitions apply:

(1) The term *acquiring agency* means the U.S. government department, agency, independent establishment, or corporation described in paragraph (c)(7) of this section that is a party to the contract. To the extent that a U.S. government department or agency, other than the acquiring agency, is making the payments pursuant to the contract, that department or agency is also considered to be the acquiring agency.

(2) The term *contract* has the same meaning as provided in 48 CFR 2.101, and thus does not include a grant agreement or a cooperative agreement within the meaning of 31 U.S.C. 6304 and 6305, respectively. A contract may include an agreement that is not executed under the Federal Acquisition Regulations (FAR), 48 CFR Chapter 1.

(3) The term *contract ratio* refers to the nonexempt amount over the total contract price.

(4) The term *contracting party* means any person that is a party to a contract with the U.S. government that is entered into on or after January 2, 2011. See § 1.5000C–1(b) for situations involving a nominee or agent.

(5) The term *foreign contracting party* means a contracting party that is a foreign person.

(6) The term *foreign person* means any person other than a United States person (as defined in section 7701(a)(30)).

(7) The term *Government of the United States* or *U.S. government* means the executive departments specified in 5 U.S.C. 101, the military departments specified in 5 U.S.C. 102, the independent establishments specified in 5 U.S.C. 104(1), and wholly owned government corporations specified in 31 U.S.C. 9101(3). Unless otherwise specified in 5 U.S.C. 101, 102, or 104(1), or 31 U.S.C. 9101(3), the term Government of the United States or U.S. government does not include any quasi-governmental entities or instrumentalities of the U.S. government.

(8) The term *international procurement agreement* means the World Trade Organization Government Procurement Agreement within the meaning of 48 CFR 25.400(a)(1) and any free trade agreement to which the United States is a party that includes government procurement obligations that provide appropriate competitive government procurement opportunities to U.S. goods, services, and suppliers. A party to an international procurement agreement is a signatory to the agreement and does not include a country that is merely an observer with respect to the agreement.

(9) The term *nonexempt amount* means the portion of the contract price allocated to nonexempt goods and nonexempt services.

(10) The term *nonexempt goods* means goods manufactured or produced in a foreign country that is not a party to an international procurement agreement with the United States.

(11) The term *nonexempt services* means services provided in a foreign country that is not a party to an international procurement agreement with the United States.

(12) The term *outlying areas* has the same meaning as set forth in 48 CFR 2.101(b), which includes Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(13) The term *qualified income tax treaty* means a U.S. income tax treaty in force that contains a nondiscrimination provision that applies to the tax imposed under section 5000C and prohibits taxation that is more burdensome on a foreign national than a U.S. national (or in the case of certain income tax treaties, taxation that is more burdensome on a foreign citizen than a U.S. citizen), regardless of its residence.

(14) The term *Section 5000C Certificate* means a written statement that includes the information described in § 1.5000C–2(d) that the foreign contracting party submits to an acquiring agency for the purposes of demonstrating that the foreign contracting party is eligible for certain exemptions from withholding (in whole or in part) under section 5000C with respect to a contract. The term may also include any form that the Internal Revenue Service may prescribe as a substitute for the Section 5000C Certificate, such as Form W–14, ''Certificate of Foreign Contracting Party Receiving Federal Procurement Payments.''

(15) The term *specified Federal procurement payment* means any payment made pursuant to a contract with a foreign contracting party that is for goods manufactured or produced or services provided in a foreign country that is not a party to an international procurement agreement with the United States. For purposes of the prior sentence, a foreign country does not include an outlying area.

(16) The term *Taxpayer Identification Number* or *TIN* means the identifying number assigned to a person under section 6109, as defined in section 7701(a)(41).

(17) The term *total contract price* means the total cost to the U.S. Government of the goods and services procured under a contract and paid to the contracting party.

(d) *Exemptions.* The tax imposed under paragraph (b) of this section does not apply to the payments made in the following situations. For the exemptions in paragraphs (d)(5), (6) and (7) of this section, see § 1.5000C–2(d) for the procedures to eliminate withholding by an acquiring agency.

(1) *Simplified acquisitions.* Payments for purchases under the simplified acquisition procedures that do not exceed the simplified acquisition threshold as described in 48 CFR 2.101.

(2) *Emergency acquisitions.* Payments made pursuant to a contract if the contract is—

(i) Awarded under the ''unusual and compelling urgency'' authority of 48 CFR 6.302–2, or

(ii) Entered into under the emergency acquisition flexibilities as defined in 48 CFR part 18.

(3) *Certain personal service contracts.* Payments for services provided by, and under contracts with, a single individual in which the payments do not (and will not) exceed on an annual calendar year basis the simplified acquisition threshold as described in 48 CFR 2.101 for all years of the contract. Payments that satisfy this exemption remain exempt if the contract is later renegotiated so that future payments under the contract do not meet this exemption.

(4) *Certain foreign humanitarian assistance contracts.* Payments made by the U.S. government pursuant to a contract with a foreign contracting party to obtain goods or services described in or authorized under 7 U.S.C. 1691, *et seq.*, 22 U.S.C. 2151, *et seq.*, 22 U.S.C. 2601 *et seq.*, 22 U.S.C. 5801 *et seq.*, 22 U.S.C. 5401 *et seq.*, 10 U.S.C. 402, 10 U.S.C. 404, 10 U.S.C. 407, 10 U.S.C. 2557, and 10 U.S.C. 2561, if the acquiring agency determines that the payment is for the purpose of providing foreign humanitarian assistance.

(5) *Certain international agreements.* Payments made by the U.S. government pursuant to a contract with a foreign contracting party when the payments are entitled to relief from the tax imposed under section 5000C pursuant to an international agreement with the United States, including relief pursuant to a nondiscrimination provision of a qualified income tax treaty, because the foreign contracting party is entitled to the benefit of that provision.

(6) *Goods manufactured or produced or services provided in the United States.* A payment made pursuant to a contract to the extent that the payment is for goods manufactured or produced or services provided in the United States.

(7) *Goods manufactured or produced or services provided in a country that is a party to an international procurement agreement.* A payment made pursuant to a contract to the extent the payment is for goods manufactured or produced or services provided in a country that is a party to an international procurement agreement, as defined in paragraph (c)(8) of this section.

(e) *Country in which goods are manufactured or produced or services provided*—

(1) *Goods manufactured or produced.* Solely for purposes of section 5000C, goods are manufactured or produced in the country (or countries)—

(i) Where property has been substantially transformed into the goods that are procured pursuant to a contract; or

(ii) Where there has been assembly or conversion of component parts (involving activities that are substantial in nature and generally considered to constitute the manufacture or production of property) into the final product that constitutes the goods procured pursuant to a contract.

(2) *Provision of services.* Solely for purposes of section 5000C, services are considered to be provided in the country where the individuals performing the services are physically located when they perform their duties pursuant to the contract.

(3) *Allocation of total contract price to determine the nonexempt amount.* If, pursuant to a contract, goods are manufactured or produced, or services are provided, in multiple countries and only a portion of the goods manufactured or produced, or the services provided, pursuant to the contract are nonexempt goods or nonexempt services, a foreign contracting party may use a reasonable allocation method to determine the nonexempt amount. A reasonable allocation method would include taking into account the proportionate costs (including the cost of labor and raw materials) incurred to manufacture or produce the goods in each country, or taking into account the proportionate costs incurred to provide the services in each country.

(4) *Reduction or elimination of withholding by an acquiring agency.* For procedures to reduce or eliminate withholding by an acquiring agency based on where goods are manufactured or produced or where services are provided, including as a result of an allocation under this paragraph (e), see § 1.5000C–2(d).

§ 1.5000C–2 Withholding on specified Federal procurement payments.

(a) *In general.* Except as otherwise provided in this section, every acquiring agency making a specified Federal procurement payment on which tax is imposed under section 5000C and §§ 1.5000C–1 through 1.5000C–7 must deduct and withhold an amount equal to 2 percent of the payment. For rules relating to the liability of a foreign contracting party with respect to specified Federal procurement payments not fully withheld upon at source, see § 1.5000C–4. An acquiring agency may rely upon any information furnished by a contracting party under this section unless the acquiring agency has reason to know that the information is incorrect or unreliable. An acquiring agency has reason to know that the information is incorrect or unreliable if it has knowledge of relevant facts or statements contained in the submitted information such that a reasonably prudent person in the position of the acquiring agency would know that the information provided is incorrect or unreliable.

(b) *Steps in determining the obligation to withhold under section 5000C.* An acquiring agency generally determines its obligation to withhold under section

5000C according to the steps described in this paragraph (b). See, however, paragraph (e) of this section for situations in which withholding may be increased in the case of underwithholding, or may be decreased in the case of overwithholding.

(1) *Determine whether the payment is pursuant to a contract for goods or services.* The acquiring agency determines whether it is making a payment pursuant to a contract for goods or services. To the extent that the acquiring agency is making a payment for any other purpose, it does not have an obligation to withhold under section 5000C on the payment.

(2) *Determine whether the payment is made pursuant to a contract with a U.S. person.* The acquiring agency determines whether the payment is made pursuant to a contract with a person considered to be a United States person (U.S. person) in accordance with paragraph (c) of this section. If the other contracting party is a U.S. person, the acquiring agency does not have an obligation to withhold under section 5000C on the payment.

(3) *Determine whether the payment is for purchases under the simplified acquisition procedures.* The acquiring agency determines whether the payment is for purchases under the simplified acquisitions procedures that do not exceed the simplified acquisition threshold as described in 48 CFR 2.101. If it is, the acquiring agency does not have an obligation to withhold under section 5000C on the payment.

(4) *Determine whether the payment is for emergency acquisitions.* The acquiring agency determines whether the payment is made for certain emergency acquisitions within the meaning of § 1.5000C–1(d)(2). If it is, the acquiring agency does not have an obligation to withhold under section 5000C on the payment.

(5) *Determine whether the payment is for personal services under the simplified acquisition threshold.* The acquiring agency determines whether payments for services under contracts with a single individual do not exceed the simplified acquisition threshold as described in 48 CFR 2.101 on an annual basis for all years of the contract. If that is the case, the acquiring agency does not have an obligation to withhold under section 5000C on the payment.

(6) *Determine whether the payment is pursuant to a foreign humanitarian assistance contract.* The acquiring agency determines whether the payment is made pursuant to a foreign humanitarian assistance contract described in § 1.5000C–1(d)(4). If it is, the acquiring agency does not have an obligation to withhold under section 5000C on the payment.

(7) *Determine whether the foreign contracting party is entitled to relief pursuant to an international agreement.* If the foreign contracting party submits a Section 5000C Certificate in accordance with paragraph (d) of this section representing that the foreign contracting party is entitled to relief from the tax imposed under section 5000C pursuant to an international agreement with the United States (such as relief pursuant to the nondiscrimination provision of a qualified income tax treaty), the acquiring agency does not have an obligation to withhold under section 5000C on the payment.

(8) *Determine whether the contract is for goods manufactured or produced or services provided in the United States or in a foreign country that is a party to an international procurement agreement.* If the foreign contracting party submits a Section 5000C Certificate in accordance with paragraph (d) of this section that represents that the contract is for goods manufactured or produced or services provided in the United States, or in a foreign country that is a party to an international procurement agreement, the acquiring agency does not have an obligation to withhold. If the Section 5000C Certificate provides that payments under the contract are only partially exempt from withholding under section 5000C, the acquiring agency must withhold to the extent described in paragraph (b)(8) of this section.

(9) *Compute amounts to withhold.* If, after evaluating each step described in this paragraph (b), the acquiring agency determines that it has an obligation to withhold, the acquiring agency computes the amount of withholding by multiplying the amount of the payment by 2 percent, unless the foreign contracting party has provided a Section 5000C Certificate or the payment is only in part for goods or services. In cases in which the Section 5000C Certificate demonstrates that the exemption in Step 8 applies, the acquiring agency generally computes the amount of withholding by multiplying the amount of the payment by the contract ratio provided on the most recent Section 5000C Certificate, the product of which is multiplied by 2 percent. However, in cases in which the exemption in Step 8 applies and the requirements of paragraph (d)(4)(iii)(B)(*2*) of this section are met, the acquiring agency computes the amount of withholding based on the payment for the specifically identified items, which may be identified by the contract line item number, or CLIN. In the case in which the payment is only in part for goods or services, the acquiring agency reduces the amount of the payment subject to the tax to the extent it is for something other than goods or services. The acquiring agency withholds the computed amount from the payment.

(10) *Deposit and report amounts withheld.* The acquiring agency deposits and reports the amounts determined in the prior step in accordance with § 1.5000C–3.

(c) *Determining whether the contracting party is a U.S. person*—(1) *In general.* An acquiring agency must rely on the provisions of this paragraph (c) to determine the status of the contracting party as a U.S. person for purposes of withholding under section 5000C.

(2) *Determination based on Taxpayer Identification Number (TIN).* An acquiring agency must treat a contracting party as a U.S. person if the U.S. government information system (such as the System for Award Management (SAM)) indicates that the contracting party is a corporation (for example, because the name listed in SAM contains the term "Corporation," "Inc.," or "Corp.") and that it has a TIN that begins with two digits other than "98" (a limited liability company or LLC is not treated as a corporation for purposes of this paragraph (c)(2)). Further, an acquiring agency must treat a contracting party as a U.S. person if the acquiring agency has access to a U.S. government information system that indicates that the contracting party is an individual with a TIN that begins with a digit other than "9".

(3) *Determination based on the Form W–9.* An acquiring agency must treat a contracting party as a U.S. person if the person has submitted to it a valid Form W–9, "Request for Taxpayer Identification Number (TIN) and Certificate" (or valid substitute form described in § 31.3406(h)–3(c)(2) of this chapter), signed under penalties of perjury.

(4) *Contracting party treated as a foreign contracting party.* If an acquiring agency cannot determine that a contracting party is a U.S. person based on application of paragraph (c)(2) or (3) of this section, then the contracting party is treated as a foreign contracting party for purposes of this section.

(d) *Withholding when a foreign contracting party submits a Section 5000C Certificate*—(1) *In general.* Unless the acquiring agency has reason to know that the information is incorrect or unreliable, the acquiring agency may rely on a claim that a foreign contracting party is entitled to an exemption (in whole or in part) from withholding on payments pursuant to a contract if the foreign contracting party provides a Section 5000C Certificate to the acquiring agency as prescribed in this paragraph (d). When a Section 5000C Certificate is furnished, the acquiring agency does not withhold, or must reduce the amount of withholding, on payments made to a foreign person if the certificate establishes that the foreign person is wholly or partially exempt from withholding. An acquiring agency may establish a system for a foreign contracting party to electronically furnish a Section 5000C Certificate.

(2) *Exemption for a foreign contracting party entitled to the benefit of relief pursuant to certain international agreements.* An acquiring agency does not withhold on payments pursuant to a contract with a foreign contracting party when the payment is entitled to relief from the tax imposed under section 5000C pursuant to an international agreement, including relief pursuant to a nondiscrimination provision of a qualified income tax treaty, because the foreign contracting party is entitled to the benefit of that agreement and the foreign contracting party has submitted a Section 5000C Certificate that includes all of the information described in paragraphs (d)(4)(i) and (ii) of this section.

(3) *Exemption when goods are manufactured or produced or services provided in the United States, or in a foreign country that is a party to an international procurement agreement.* An acquiring agency does not withhold on payments pursuant to a contract with a foreign contracting party to the extent that the payments are for goods manufactured or produced or services provided in the United States or in a foreign country that is a party to an international procurement agreement with the United States, provided that the foreign contracting party has submitted a Section 5000C Certificate that includes all of the information described in paragraphs (d)(4)(i) and (iii) of this section. If the Section 5000C Certificate provides that the payment is only partially exempt from withholding under section 5000C, the acquiring agency must withhold to the extent that the payment is not exempt.

(4) *Information required for Section 5000C Certificate*—(i) *In general.* The Section 5000C Certificate must be signed under penalties of perjury by the foreign contracting party and contain—

(A) The name of the foreign contracting party, country of organization (if applicable), and permanent residence address of the foreign contracting party;

(B) The mailing address of the foreign contracting party (if different than the permanent residence address);

(C) The TIN assigned to the foreign contracting party (if any);

(D) The identifying or reference number on the contract (if known);

(E) The name and address of the acquiring agency;

(F) A statement that the person signing the Section 5000C Certificate is the foreign contracting party listed in paragraph (d)(4)(i)(A) of this section (or is authorized to sign on behalf of the foreign contracting party);

(G) A statement that the foreign contracting party is not acting as an agent or nominee for another foreign person with respect to the goods manufactured or produced or services provided under the contract;

(H) A statement that the foreign contracting party agrees to pay an amount equal to any tax (including any applicable penalties and interest) due under section 5000C that the acquiring agency does not withhold under section 5000C;

(I) A statement that the foreign contracting party acknowledges and understands the rules in § 1.5000C–4 relating to procedural obligations related to section 5000C; and

(J) A statement that the foreign contracting party has not engaged in a transaction (or series of transactions) with a principal purpose of avoiding the tax imposed under section 5000C as defined in § 1.5000C–5.

(ii) *Additional information required for claiming an exemption based on certain international agreements with the United States.* In addition to the information required by paragraph (d)(4)(i) of this section, a foreign contracting party claiming an exemption from withholding in reliance on a provision of an international agreement with the United States, including a qualified income tax treaty, must provide—

(A) The name of the international agreement under which the foreign contracting party is claiming benefits;

(B) The specific provision of the international agreement relied upon (for example, the nondiscrimination article of a qualified income tax treaty); and

(C) The basis on which it is entitled to the benefits of that provision (for example, because the foreign contracting party is a corporation organized in a foreign country that has in force a qualified income tax treaty with the United States that covers all nationals, regardless of their residence).

(iii) *Additional required information for claiming exemption based on country where goods are manufactured or services provided.* (A) *In general.* In addition to the information required by paragraph (d)(4)(i) of this section, a foreign contracting party claiming an exemption from withholding (in whole or in part) because payments will be pursuant to a contract for goods manufactured or produced or services provided in the United States, or a foreign country that is party to an international procurement agreement, must describe on the Section 5000C Certificate the relevant goods or services and the country (or countries) in which they are manufactured or produced, or are provided, and must include the name of the international procurement agreement or agreements (if relevant).

(B) *Information on allocation to exempt and nonexempt amounts.* (*1*) *In general.* In situations in which a foreign contracting party claims the exemption in paragraph (d)(3) of this section with respect to only a portion of the payments received under the contract, the Section 5000C Certificate must include an explanation of the method used by the foreign contracting party to allocate the total contract price among the countries, as described in § 1.5000C–1(e)(3), if applicable. In general, the Section 5000C Certificate also must include the total contract price and the nonexempt amount; however, when necessary, an estimate of the total contract price or the nonexempt amount may be used. For example, total contract price may be estimated when a Section 5000C Certificate is being completed with respect to payments to be made pursuant to a cost-reimbursement contract that is paid on the basis of actual incurred costs and the total amount of such costs is not known at the time the certificate is provided.

(*2*) *Specific identification of exempt items.* If agreed to by the acquiring agency, the Section 5000C Certificate may identify specific exempt and nonexempt amounts. For example, specific contract line items (such as a contract line item number or CLIN) identified in the contract may be listed on the Section 5000C Certificate as exempt and nonexempt amounts (in whole or in part), as applicable. When this paragraph applies, and whether or not the contract identifies exempt and nonexempt amounts, a foreign contracting party must provide the information required by paragraphs (d)(4)(iii)(A) and (d)(4)(iii)(B)(*1*) of this section, on the Section 5000C Certificate to explain why the contract line items are eligible for an exemption; however, the foreign contracting party is not required to include information about the total contract price under this paragraph. In these circumstances, only one Section 5000C Certificate is required to be provided identifying the exempt and nonexempt contract line items that relate to the contract (for example, a spreadsheet may be attached to the Section 5000C Certificate that identifies the contract line items with an explanation for the treatment as exempt or nonexempt).

(5) *Validity period of Section 5000C Certificate.* Except as otherwise provided in paragraph (d)(6) of this section, the Section 5000C Certificate is valid for the term of the contract.

(6) *Change in circumstances.* A foreign contracting party must submit a revised Section 5000C Certificate within 30 days of a change in circumstances that causes the information in a Section 5000C Certificate held by the acquiring agency to be incorrect with respect to the acquiring agency's determination of whether to withhold or the amount of withholding under Section 5000C. An acquiring agency must request a new Section 5000C Certificate from a contracting party in circumstances in which it knows (or has reason to know) that a previously submitted Section 5000C Certificate becomes incorrect or unreliable. An acquiring agency may request an updated Section 5000C Certificate at any time, including when other documentation is required under the contract, such as the annual representations and certifications required in 48 CFR 4.1201. *See* § 1.5000C–6, *Example 6,* for an illustration of this paragraph (6).

(7) *Form W–14.* A foreign contracting party may choose to use Form W–14, "Certificate of Foreign Contracting Party Receiving Federal Procurement Payments" (or other form that the IRS may prescribe), as its Section 5000C Certificate, provided that it includes all the necessary information required by this paragraph (d).

(8) *Time for submitting Section 5000C Certificate.* A contracting party must submit the Section 5000C Certificate (such as Form W–14 or Form W–9) as early as practicable (for example, when the offer for the contract is submitted to the U.S. government). In all cases, however, the Section 5000C Certificate must be submitted to the acquiring agency no later than the date of execution of the contract.

(e) *Offset for underwithholding or overwithholding*—(1) *In general.* If the foreign contracting party discovers that amounts withheld on prior payments either were insufficient or in excess of the amount required to satisfy its tax liability under section 5000C, the foreign contracting party may request the acquiring agency to increase or decrease the amount of withholding on future payments for which withholding is required under section 5000C. The request must be in writing, signed under penalties of perjury, contain the amount by which the foreign contracting party requests to increase or decrease future amounts withheld under section 5000C, and explain the reason for the request. The request may be submitted in conjunction with an original or updated Section 5000C Certificate.

(2) *Underwithholding.* Upon receipt of a request described in paragraph (e)(1) of this section, acquiring agencies may increase the amount of withholding under this paragraph to correct underwithholding only if the payment for which the increase is applied is otherwise subject to withholding under section 5000C and made before the date that Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons," is required to be filed (not including extensions) with respect to the payment for which the underwithholding occurred. Amounts withheld under this paragraph must be deposited and reported in the time and manner as prescribed by § 1.5000C–3. *See* § 1.5000C–4 for procedures for a foreign contracting party that must pay tax due when its tax liability under section 5000C was not fully satisfied by withholding by an acquiring agency.

(3) *Overwithholding.* Upon receipt of a request described in paragraph (e)(1) of this section, acquiring agencies may decrease the amount of withholding on subsequent payments made to the foreign contracting party that are otherwise subject to withholding under section 5000C provided that the payment for which the decrease is applied is made on or before the date on which Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons," is required to be filed (not including extensions) with respect to the payment for which the overwithholding occurred. *See* § 1.5000C–4(e) for procedures for foreign contracting parties to file a claim for refund for the overwithheld amount under section 5000C.

§ 1.5000C–3 Payment and returns of tax withheld by the acquiring agency.

(a) *In general.* This section provides administrative procedures that acquiring agencies must follow to satisfy their obligations to deposit and report amounts withheld under § 1.5000C–2. An acquiring agency with a section 5000C withholding obligation must increase the amount it deducts and withholds under chapter 3 for fixed or determinable annual or periodical income (FDAP income) by the amount it must withhold under § 1.5000C–2. Accordingly, this section generally applies the administrative provisions of chapter 3 for FDAP income relating to the deposit, payment, and reporting for amounts withheld under § 1.5000C–2, and contains some variation from those provisions to take into account the nature of the tax imposed under section 5000C.

(b) *Deposit rules*—(1) *Acquiring agency with a chapter 3 deposit requirement treats amounts withheld as under chapter 3.* If an acquiring agency has a chapter 3 deposit obligation for a period, it must treat any amount withheld under § 1.5000C–2 as an additional amount of tax withheld under chapter 3 for purposes of the deposit rules of § 1.6302–2. Thus, depending on the combined amount withheld under chapter 3 and § 1.5000C–2, an acquiring agency subject to this paragraph (b)(1) must make monthly deposits, quarter-monthly deposits, or annual deposits under the rules in § 1.6302–2. To the extent provided in forms, instructions, or publications prescribed by the Internal Revenue Service (IRS), acquiring agencies must deposit all withheld amounts by *electronic funds transfer,* as that term is defined in § 31.6302–1(h)(4)(i) of this chapter.

(2) *Acquiring agency with no chapter 3 filing obligation deposits withheld amounts monthly.* If an acquiring agency has no chapter 3 deposit obligation to which the deposit rules of § 1.6302–2 apply for a calendar month, it must make monthly deposits of the amounts withheld under the rules in this paragraph (b)(2). Thus, an acquiring agency with no chapter 3 deposit obligations and that has withheld any amount under § 1.5000C–2 during any calendar month must deposit that amount by the 15th day of the month following the payment. To the extent provided in forms, instructions, or publications prescribed by the Internal Revenue Service (IRS), acquiring agencies must deposit all withheld amounts by *electronic funds transfer,* as that term is defined in § 31.6302–1(h)(4)(i) of this chapter.

(c) *Return requirements*—(1) *In general.* Except as provided in paragraph (c)(2) of this section, an acquiring agency that withholds an amount pursuant to section 5000C generally must file Form 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding," and Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign

Persons,'' each year, or other such forms as the IRS may prescribe, to report information related to amounts withheld under section 5000C. The acquiring agency must prepare a Form 1042–S for each contracting party reporting the amount withheld under section 5000C for the preceding calendar year. The Form 1042 must show the aggregate amounts withheld under section 5000C that were required to be reported on Forms 1042–S (including those amounts withheld under section 5000C for which a Form 1042–S is not required to be filed pursuant to paragraph (c)(2) of this section). The Form 1042 must also include the information required by the form and accompanying instructions. Further, any forms required under this paragraph (c) are due at the same time, at the same place, and eligible for the same extended due dates and may be amended in the same manner as Form 1042 and Form 1042–S (or such other forms as the IRS may prescribe related to chapter 3). The acquiring agency must furnish a copy of the Form 1042–S (or such other form as the IRS may prescribe for the same purpose) to the contracting party for whom the form is prepared on or before March 15 of the calendar year following the year in which the amount subject to reporting under section 5000C was paid. It must be filed with a transmittal form as provided in the instructions for Form 1042–S and to the transmittal form. Section 5000C Certificates or other statements or information as prescribed by § 1.5000C–2 that are provided to the acquiring agency are not required to be attached to the Form 1042 filed with the IRS. However, an acquiring agency that is required to file Form 1042 must retain a copy of Form 1042, Form 1042–S, the Section 5000C Certificates, or other statements or information prescribed by § 1.5000C–2 for at least three years from the original due date of Form 1042 or the date it was filed, whichever is later. An acquiring agency that is not required to file Form 1042 must retain any Section 5000C Certificates or other statements or information as prescribed by § 1.5000C–2 for at least three years from the date the Form 1042 would have been due had the acquiring agency had an obligation to file.

(2) *Classified or confidential contracts.* An acquiring agency is not required to report information otherwise required by this section on Form 1042–S for payments made pursuant to classified or confidential contracts (as described in section 6050M(e)(3)), unless the acquiring agency determines that the information reported on the Form 1042–S does not compromise the safeguarding of classified information or national security.

(d) *Special arrangement for certain contracts.* In limited circumstances, the IRS may authorize the amount otherwise required to be withheld under section 5000C to be deposited in the time and manner mutually agreed upon by the acquiring agency and the foreign contracting party. In these circumstances, the IRS may in its sole discretion also modify any reporting or return requirements of the acquiring agency or the foreign contracting party.

§ 1.5000C–4 Requirement for the foreign contracting party to file a return and pay tax, and procedures for the contracting party to seek a refund.

(a) *In general.* For purposes of subtitle F of the Internal Revenue Code (''Procedure and Administration''), the tax imposed under section 5000C on foreign persons is treated as a tax imposed under subtitle A. Except as provided elsewhere in the regulations under section 5000C, forms, or accompanying instructions, the tax imposed on foreign contracting parties under section 5000C is administered in a manner similar to gross basis income taxes. This section provides procedures that a foreign contracting party must follow to satisfy its obligations to report and deposit tax due under § 1.5000C–1 as well as procedures for contracting parties to seek a refund of amounts overwithheld.

(b) *Tax obligation of foreign contracting party independent of withholding.* A foreign contracting party subject to tax under section 5000C and §§ 1.5000C–1 through 1.5000C–7 remains liable for the tax unless its tax obligation was fully satisfied by withholding by an acquiring agency in accordance with §§ 1.5000C–2 and 1.5000C–3.

(c) *Return of tax by the foreign contracting party.* If the tax liability under § 1.5000C–1 relating to a payment is not fully satisfied by withholding in accordance with §§ 1.5000C–2 and 1.5000C–3 (including as a result of the use of an estimated nonexempt amount or estimated total contract price in computing the contract ratio), a foreign contracting party subject to tax under § 1.5000C–1 during a calendar year must make a return of tax on, for example, Form 1120–F, ''U.S. Income Tax Return of a Foreign Corporation,'' or such other form as the Internal Revenue Service (IRS) may prescribe to report the amount of tax due under section 5000C (required return). A foreign contracting party with no other U.S. tax filing obligation other than with respect to its liability for the tax imposed under section 5000C must file its required return on or before the fifteenth day of the sixth month following the close of its taxable year. The required return must include the information required by the form and accompanying instructions. The required return must be filed at the place and time (including any extension of time to file) provided by the form and accompanying instructions. Penalties for failure to file contained in Subtitle F can apply to foreign contracting parties who fail to file the required return. A foreign contracting party must attach copies of all Forms 1042–S, ''Foreign Person's U.S. Source Income Subject to Withholding,'' received from acquiring agencies (if any) to the required return.

(d) *Time and manner of paying tax.* A foreign contracting party must pay the tax imposed under section 5000C in the manner provided and in the time prescribed in the required return and accompanying instructions. In general, the foreign contracting party must pay the tax at the time that the required return is due, excluding extensions. To the extent provided in forms, instructions, or publications prescribed by the IRS, each foreign contracting party must deposit tax due under section 5000C by *electronic funds transfer,* as that term is defined in § 31.6302–1(h)(4)(i) of this chapter. A foreign contracting party that fails to pay tax in the time and manner prescribed in this section (or under forms, instructions, or publications prescribed by the IRS under this section) may be subject to penalties and interest under Subtitle F.

(e) *Refund requests when amount withheld exceeds tax liability.* After taking into account any offsets pursuant to § 1.5000C–2(e)(3), if the acquiring agency has overwithheld amounts under section 5000C and has made a deposit of the amounts under § 1.5000C–3(b), the contracting party may claim a refund of the amount overwithheld pursuant to the procedures described in chapter 65. The contracting party's claim for refund must meet the requirements of section 6402 and the regulations thereunder, as applicable, and must be filed before the expiration of the period of limitations on refund in section 6511 and the regulations thereunder. In general, the contracting party making a refund claim must file the required return to claim a refund, stating the grounds upon which the claim is based. A Section 5000C Certificate and a copy of the Form 1042–S received from the acquiring agency must be attached to the required return. For purposes of this section, an amount is overwithheld if the amount withheld from the payment pursuant to section 5000C and §§ 1.5000C–1 through 1.5000C–7 exceeds the contracting party's tax liability under § 1.5000C–1, regardless of whether the overwithholding was in error or appeared correct when it occurred. A U.S. person may seek a refund under this paragraph (e) even if it was treated as a foreign person under the rules in § 1.5000C–2 (for example, because it neither had a taxpayer identification number on file in the System for Award Management nor submitted Form W–9, "Request for Taxpayer Identification Number (TIN) and Certification," to the acquiring agency).

§ 1.5000C–5 Anti-abuse rule.

If a foreign person engages in a transaction (or series of transactions) with a principal purpose of avoiding the tax imposed under section 5000C, the transaction (or series of transactions) may be disregarded or the arrangement may be recharacterized (including disregarding an intermediate entity), in accordance with its substance. If this section applies, the foreign person remains liable for any tax (including any tax obligation unsatisfied as a result of underwithholding) and the Internal Revenue Service retains all other rights and remedies under any applicable law available to collect any tax imposed on the foreign contracting party by section 5000C.

§ 1.5000C–6 Examples.

The rules of §§ 1.5000C–1 through 1.5000C–4 are illustrated by the following examples. For purposes of the examples: All contracts are executed with acquiring agencies on or after January 2, 2011, and are for the provision of either goods or services; none of the exemptions described in § 1.5000C–1(d) apply, unless otherwise explicitly stated; the acquiring agencies have no other withholding obligations under chapter 3 of the Code and have no other contracts subject to section 5000C; the foreign contracting parties do not have any U.S. source income or a U.S. tax return filing obligation other than a tax return filing obligation that arises based on the facts described in the particular example; and none of the contracts are classified or confidential contracts as described in section 6050M(e)(3).

Example 1. U.S. person not subject to tax; no withholding. (i) *Facts.* Company A Inc., a domestic corporation and the contracting party, enters into a contract with Agency L, the acquiring agency. Before making its first payment under the contract (for example, on the date of execution of the contract), pursuant to the first step in § 1.5000C–2(b), Agency L determines that the contract will be for services. Under the second step, Agency L reviews Company A Inc.'s record in the System for Award Management (SAM) and determines that Company A is a corporation and is considered to be a U.S. person because Agency L's records demonstrate that Company A Inc. is a business entity treated as a corporation for tax purposes that has a TIN that does not begin with "98."

(ii) *Analysis.* Company A Inc. is a U.S. person and thus is not subject to the tax under section 5000C. Moreover, because Company A Inc. is a corporation for tax purposes that has a TIN that does not begin with "98," Agency L is able to determine that it has no obligation to withhold any amounts under section 5000C on the payment made to Company A Inc. For purposes of section 5000C, Company A Inc. could also establish that it is a U.S. person by providing a Form W–9, "Request for Taxpayer Identification Number (TIN) and Certification," to Agency L. Company A Inc. does not need to file a Section 5000C Certificate to demonstrate its eligibility for an exemption from withholding.

Example 2. Foreign national entitled to the benefit of a nondiscrimination provision of a treaty; no withholding. (i) *Facts.* Company B, a foreign contracting party and a national of Country T, provides goods to Agency M, the acquiring agency. Company B determines that it is exempt from tax under section 5000C because it is entitled to the benefit of the nondiscrimination article of a qualified income tax treaty between the United States and Country T. Company B submits a Section 5000C Certificate to Agency M when the contract is executed. Company B uses Form W–14, "Certificate of Foreign Contracting Party Receiving Federal Procurement Payments," and properly fills the relevant sections stating the name of the treaty, the specific article relied upon, and the basis on which it is entitled to the benefits of that article. Following the steps in § 1.5000C–2, Agency M determines that the nondiscrimination provision of the Country T-United States income tax treaty applies to exempt Company B from the tax imposed under section 5000C. Agency M makes one lump sum payment of $50 million to Company B pursuant to the contract.

(ii) *Analysis.* Company B has no liability for tax under section 5000C because it is entitled to the benefit of a nondiscrimination article of a qualified income tax treaty. Because Company B submitted a Section 5000C Certificate meeting the requirements in § 1.5000C–2 and Agency M does not have reason to know that the submitted information is incorrect or unreliable, Agency M is not required to withhold under section 5000C. Agency M must retain the Section 5000C Certificate for at least three years pursuant to § 1.5000C–3(c)(1) from the due date for the Form 1042 (if it were required).

Example 3. Foreign treaty beneficiary does not submit Section 5000C Certificate; withholding required. (i) *Facts.* The facts are the same as in *Example 2,* except that Company B does not submit a Section 5000C Certificate to Agency M before Agency M makes the $50 million payment.

(ii) *Analysis.* Company B is not subject to tax under section 5000C, but Agency M must nevertheless withhold on the payment made to Company B because Agency M did not receive a Section 5000C Certificate from Company B in the time and manner required pursuant to § 1.5000C–2(d). Agency M must withhold $1 million (2 percent of $50 million) on the payment, and deposit that amount under the rules in § 1.5000C–3 no later than the 15th day of the month following the month in which the payment was made. Agency M must also complete Forms 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons," and 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding," on or before the date specified on those forms and the accompanying instructions. Agency M must furnish copies of Form 1042–S to Company B. Agency M must retain a copy of the Form 1042 and the Form 1042–S for 3 years from the due date for the Form 1042 pursuant to § 1.5000C–3(c)(1). As Company B is not liable for the tax, it may later file a claim for refund pursuant to the procedures described in chapter 65.

Example 4. Foreign contracting party partially exempt from tax under section 5000C when goods are manufactured in different countries. (i) *Facts.* Company C, a foreign contracting party, provides goods to Agency N in 2015. The terms of the contract require that payment be made to Company C by Agency N in two $5 million installments in 2015. Company C has a TIN that begins with "98" and is not entitled to relief pursuant to an international agreement with the United States, such as relief pursuant to a nondiscrimination provision of a qualified income tax treaty. Some of the goods are manufactured in Country R, which is a party to an international procurement agreement with the United States, with the remainder being manufactured in Country S, a country that is not a party to an international procurement agreement with the United States. Company C uses a reasonable allocation method based on the information available to it at the time in accordance with § 1.5000C–1(e)(3) to estimate that $3 million is the nonexempt amount that is allocated to the goods produced in Country S. Company C submits a valid and complete Section 5000C Certificate to Agency N in the time and manner required by §§ 1.5000C–1 through 1.5000C–7 that provides that the nonexempt amount is $3 million. In 2015, Agency N pays Company C in two installments pursuant to the terms of the contract.

(ii) *Analysis.* Using a reasonable allocation method to determine the estimated nonexempt amount, Company C determines that pursuant to section 5000C and §§ 1.5000C–1 through 1.5000C–7, tax of $30,000 (2 percent of the $5 million payment, or $100,000 multiplied by a fraction, the numerator of which is the estimated nonexempt amount, $3 million, and the denominator of which is the estimated total contract price, or $10 million) is imposed on each payment made to Company C. Because Company C has timely submitted a Section 5000C Certificate explaining the basis for this allocation, Agency N withholds $30,000 on each payment made to Company C. Agency N must deposit each $30,000 withholding tax under the rules in § 1.5000C–3 no later than the 15th day of the month following the month in which each payment is made. Agency N must also complete Forms 1042 and 1042–S and furnish copies of Form 1042–S to Company C. Agency N must retain a copy of the Form 1042 and the Form 1042–S for at least three years from the due date for the Form 1042 pursuant to § 1.5000C–3(c)(1). Provided that Agency N properly withholds on the nonexempt portion as required under section 5000C and §§ 1.5000C–1 through 1.5000C–7 and that Company C's estimate of the nonexempt amount is the actual nonexempt amount, Company C does not have an additional tax liability or a U.S. tax return filing obligation as a result of receiving the payments.

Example 5. Foreign contracting party liable for additional tax under Section 5000C not fully withheld upon due to errors on the Section 5000C Certificate. (i) *Facts.* The facts are the same as in *Example 4,* except that the Section 5000C Certificate submitted to Agency N by Company C erroneously provides that the estimated nonexempt amount is $1.5 million instead of $3 million. As a result, Agency N only withholds $15,000 (2 percent of the $5 million payment multiplied by a fraction (the numerator of which is the estimated nonexempt amount stated on the Section 5000C Certificate, $1.5 million, and the denominator of which is the estimated total contract price, or $10 million)) on each payment made to Company C. Agency N neither discovered nor had reason to know that the information on the Section 5000C Certificate was incorrect or unreliable. After both payments have been made and after the filing due date for Form 1042 for 2015, Company C determines that the estimated nonexempt amount should have been stated as $3 million on the Section 5000C Certificate.

(ii) *Analysis.* The tax imposed under section 5000C on Company C as a result of the receipt of specified Federal procurement payments is $60,000 and this amount has not been fully satisfied by withholding by Agency N. Accordingly, Company C must remit additional tax of $30,000 ($60,000 tax liability less $30,000 amounts already withheld by Agency N) and file its required return, a Form 1120–F, "U.S. Income Tax Return of a Foreign Corporation," for 2015 to report this tax liability, as required by § 1.5000C–4. Company C must explain its corrected allocation method in its Form 1120–F. Company C must also attach a copy of the Form 1042–S it received from Agency N to Form 1120–F.

Example 6. Foreign contracting party submits revised Section 5000C Certificate due to change in circumstances. (i) *Facts.* The facts are the same as in *Example 4,* except that, after the first payment, Company C changes its business so that all of the goods manufactured with respect to the second payment are manufactured in Country R. Prior to the second payment, Company C submits a revised Section 5000C Certificate indicating this change in circumstance pursuant to § 1.5000C–2(d)(6).

(ii) *Analysis.* Agency N withholds $30,000 on the first payment made to Company C and does not withhold on the second payment. Company C does not have an additional tax liability or a U.S. tax return filing obligation as a result of receiving the payments.

§ 1.5000C–7 Effective/applicability date.

Section 5000C applies to specified Federal procurement payments received pursuant to contracts entered into on and after January 2, 2011. Sections 1.5000C–1 through 1.5000C–7 apply on and after November 16, 2016. Contracting parties and acquiring agencies may rely upon the rules in the regulations before such date. If a foreign contracting party fully satisfies its tax and filing obligations under section 5000C with respect to any payments received in tax years ending before November 16, 2016 on or before the later of November 16, 2016 or the due date for the foreign person's income tax return for the year in which the payment was received in a manner consistent with the final regulations, penalties will not be asserted on the foreign contracting parties with respect to those payments or returns.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 5.** The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 6.** Section 301.6114–1 is amended by adding paragraph (c)(1)(ix) and revising paragraph (e) to read as follows:

§ 301.6114–1 Treaty-based return positions.

* * * * *

(c) * * *

(1) * * *

(ix) Notwithstanding paragraph (b)(1) of this section, that a nondiscrimination provision of a qualified income tax treaty, as defined in Treas. Reg. § 1.5000C–1(c)(13), exempts a payment from tax under section 5000C, but only if the foreign person claiming such relief has provided a Section 5000C Certificate (such as Form W–14, "Certificate of Foreign Contracting Party Receiving Federal Procurement Payments") to the acquiring agency in accordance with section 5000C and the regulations thereunder.

* * * * *

(e) *Effective/applicability date*—(1) *In general.* This section is effective for taxable years of the taxpayer for which the due date for filing returns (without extensions) occurs after December 31, 1988. However, if—

(i) A taxpayer has filed a return for such a taxable year, without complying with the reporting requirement of this section, before November 13, 1989, or

(ii) A taxpayer is not otherwise than by paragraph (a) of this section required to file a return for a taxable year before November 13, 1989, such taxpayer must file (apart from any earlier filed return) the statement required by paragraph (d) of this section before June 12, 1990, by mailing the required statement to the Internal Revenue Service, P.O. Box 21086, Philadelphia, PA 19114. Any such statement filed apart from a return must be dated, signed and sworn to by the taxpayer under the penalties of perjury. In addition, with respect to any return due (without extensions) on or before March 10, 1990, the reporting required by paragraph (a) of this section must be made no later than June 12, 1990. If a taxpayer files or has filed a return on or before November 13, 1989, that provides substantially the same information required by paragraph (d) of this section, no additional submission will be required. Foreign insurers and reinsurers subject to reporting described in paragraph (c)(7)(ii) of this section must so report for calendar years 1988 and 1989 no later than August 15, 1990.

(2) *Section 5000C.* Paragraph (c)(1)(ix) of this section applies to payments made on and after November 16, 2016 pursuant to contracts entered into on and after January 2, 2011. However, a taxpayer that receives payments exempt from tax under section 5000C by reason of a qualified income tax treaty before November 16, 2016 is not required to disclose this position on Form 8833, provided it has properly relied on Notice 2015–35, I.R.B. 2016–14, 533, in claiming the exemption.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 7.** The authority citation for part 602 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 8.** In § 602.101, paragraph (b) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * *	*
1.5000C–2	1545–0096 1545–2263
1.5000C–3	1545–0096 1545–2263

CFR part or section where identified and described	Current OMB control No.
1.5000C–4	1545–1223 1545–0074

* * * * *

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: July 22, 2016.

Mark D. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2016–19452 Filed 8–17–16; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2016–6017]

RIN 1625–AA00

Safety Zone; Tall Ships Duluth 2016—Giant Duck, Lake Superior, Duluth, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone around the Giant Duck barge and its corresponding tug during the Tall Ships Duluth 2016 parade of sail in Lake Superior near Duluth, MN. This safety zone will provide for the regulation of vessel traffic in the vicinity of the tow in the navigable waters of the United States. This safety zone is necessary to safeguard participants and spectators from the hazards associated with the limited maneuverability of a barge and tow. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Duluth.

DATES: This rule is effective from 8 a.m. through 8 p.m. August 18, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type USCG–2016–6017 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Junior Grade John Mack, Waterways management, MSU Duluth, Coast Guard; telephone 218–725–3818, email *John.V.Mack@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Because the event is scheduled for August 18, 2016, there is insufficient time to accommodate the comment period. Thus, delaying the effective date of this rule to wait for the comment period to run would be both impracticable and contrary to public interest because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with the event.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to public interest as it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with the event.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Duluth (COTP) has determined that potential hazards associated with the Giant Duck tow operating in crowded harbors in close proximity to spectator craft necessitate a safety zone. The purpose of this rule is to ensure the safety of all vessels during the Tall Ship event in Duluth, MN.

IV. Discussion of the Rule

This rule establishes a safety zone from 8 a.m. through 8 p.m. August 18, 2016. The safety zone will cover all navigable waters within 100 yards of the Giant Duck and its corresponding tug during the Tall Ships event in Duluth, MN. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the event. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive order related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-year of the safety zone. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of Lake Superior near Duluth, MN. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting no more than 12 hours that will prohibit entry within a 100 yard radius from the Giant Duck's towing arrangement. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–6017 to read as follows:

§ 165.T09–6017 Safety zone; Tall Ships Duluth 2016—Giant Duck, Lake Superior, Duluth, MN.

(a) *Location.* All waters of Lake Superior within an area bounded by a circle with a 100-yard radius around the Giant Duck's towing arrangement. The Giant Duck will be a part of the Tall Ships parade of sail event and will travel into the Duluth Harbor via the Duluth Entry before being dismantled near Bayfront Park in Duluth, MN.

(b) *Effective period.* This safety zone is effective from 8 a.m. through 8 p.m. on August 18, 2016.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Duluth, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Duluth or his designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Duluth or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Duluth or his on-scene representative.

Dated: August 12, 2016.

E.E. Williams,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 2016–19698 Filed 8–17–16; 8:45 am]

BILLING CODE 9110–04–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 74

[Notice–MA–2016–05; Docket No: 2016–0002; Sequence No. 19]

Federal Management Regulation; Nondiscrimination Clarification in the Federal Workplace

AGENCY: Office of Government-wide Policy (OGP), General Services Administration (GSA).

ACTION: Issuance of bulletin.

SUMMARY: In recent years, a number of Federal agencies, including the Equal Employment Opportunity Commission (EEOC), the Department of Education (ED), and the Department of Justice (DOJ), have all interpreted prohibitions against sex discrimination under various Federal civil rights laws and regulations. GSA has reviewed these interpretations and agency determinations, and is issuing a Federal Management Regulation (FMR) bulletin to clarify that the nondiscrimination requirement includes gender identity as a prohibited basis of discrimination under the existing prohibition of sex discrimination for any facility under the jurisdiction, custody, or control of GSA.

DATES: *Effective date:* August 18, 2016.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Oden, Director, Civil Rights Programs Division (AKB), Office of Civil Rights, 202–417–5711, or by email at *dennis.oden@gsa.gov.*

SUPPLEMENTARY INFORMATION: The EEOC, ED, and DOJ have all interpreted prohibitions against sex discrimination under various Federal civil rights laws and regulations, including Title VII of the Civil Rights Act of 1964 (as amended) and Title IX of the Education Amendments Act of 1973 (as amended), to encompass discrimination based on gender identity, including transgender status.

As required in the FMR 41 CFR part 74, section 102–74.445, all Federal agencies occupying property operated under, or subject to, the authorities of GSA must not discriminate by segregation or otherwise against any person or persons because of race, creed, religion, age, sex, color, disability, or national origin in furnishing, or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property.

Several Federal agencies with enforcement authority over Federal civil rights laws, including the EEOC, ED, and DOJ, have interpreted prohibitions against sex discrimination to include discrimination on the basis of gender identity, including transgender status. The attached bulletin clarifies that the prohibition against sex discrimination contained within the FMR includes discrimination due to gender identity, and is consistent with the legal interpretations issued by other Federal agencies, including the EEOC, ED, and DOJ, as well as guidance issued by the Office of Personnel Management (OPM).

Dated: August 8, 2016.

Denise Turner-Roth,

Administrator.

General Services Administration

Washington, DC 20417

August 8, 2016

GSA Bulletin 2016–B1

Real Property Management

TO: Heads of Federal Agencies

SUBJECT: Clarification of Nondiscrimination in the Federal Workplace.

1. *What is the purpose of this bulletin?* This bulletin clarifies the nondiscrimination clause in the Federal Management Regulation (FMR), 41 CFR part 74 Facility Management for space under the jurisdiction, custody, or control of GSA regarding prohibitions against sex discrimination.

2. *When does this bulletin expire?* This bulletin contains information of a continuing nature and will remain in effect until canceled.

3. *What is the background?*

a. Under the FMR 41 CFR part 74 section 102–74.445, Federal agencies occupying space under the jurisdiction, custody, or control of GSA must not discriminate by segregation or otherwise against any person or persons because of race, creed, religion, age, sex, color, disability, or national origin in furnishing or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on the property. The prohibition against unlawful discrimination derives from Federal laws passed by the United States Congress and enforced by specific Federal agencies.

b. Title VII, Civil Rights Act of 1964 (Pub. L. 88–352) as amended (42 U.S.C. 2000e, *et seq.*), and its implementing regulations for Federal agencies at 29 CFR part 1614 Federal Sector Equal Employment Opportunity, makes it illegal to discriminate against someone in employment on the basis of race, color, religion, national origin, or sex. The U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Department of Justice (DOJ) have statutory authority for the enforcement of Title VII. In 2012, the EEOC clarified in "*Macy* v. *Dep't of Justice,*" EEOC Appeal No. 0120120821, 2012 WL 1435995 (Apr. 12, 2012), that discrimination based on transgender status is sex discrimination in violation of Title VII. The EEOC further ruled in "*Lusardi* v. *Dep't of the Army,*" EEOC Appeal No. 0120133395, 2015 WL 1607756 (Mar. 27, 2015), that denying an employee equal access to a common restroom corresponding to the employee's gender identity is sex discrimination, that an employer cannot condition this right on the employee undergoing or providing proof of surgery or any other medical procedure, and an employer cannot avoid the requirement to provide equal access to a common restroom by restricting a transgender employee to a single-user restroom instead (though the employer can make a single-user restroom available to all employees who might choose to use it). The EEOC also clarified in "*Baldwin* v. *Dep't of Transportation,*" EEOC Appeal No. 0120133080 (July 15, 2015) that a claim of discrimination on the basis of sexual orientation necessarily states a claim of discrimination on the basis of sex under Title VII. This EEOC appeal is available at *https://www.eeoc.gov/decisions/0120133080.pdf.* The EEOC's technical assistance regarding application of these rulings can be found at *https://www.eeoc.gov/eeoc/newsroom/wysk/enforcement_protections_lgbt_workers.cfm.*

c. Likewise, DOJ, which is responsible for the overall enforcement authority for Federal civil rights laws, issued a memorandum "Treatment of Transgender Employment Discrimination Claims," December 15, 2015 under Title VII of the Civil Rights Act of 1964 asserting the Department's position that Title VII's prohibitions against sex discrimination included discrimination based on gender identity. This memorandum is available at *https://www.justice.gov/file/188671/download.*

d. Title IX of the Education Amendments of 1972 (Pub. L. 92–318), as amended, (20 U.S.C 1681, *et seq.*), and its implementing regulations at 28 CFR part 54 and 34 CFR part 106, prohibits discrimination under any education program or activity receiving Federal financial assistance. The U.S. Department of Education (ED) has statutory authority for the enforcement of Title IX. ED and DOJ on May 13, 2016 issued joint guidance to covered entities explaining that the prohibitions against sex discrimination under Title IX includes discrimination based on gender identity, which encompasses discrimination based on transgender status. The guidance explains that ED and DOJ treat an individual's gender identity as the individual's sex for purposes of Title IX and its implementing regulations. This guidance is available at *www.ed.gov/ocr/letters/colleague-201605-title-ix-transgender.pdf.*

e. The U.S. Office of Personnel Management (OPM) has also provided guidance to Federal agencies about the treatment of transgender individuals. In a document entitled "Guidance Regarding the Employment of Transgender Individuals in the Federal Workplace," OPM notes that "transgender" refers to people whose gender identity and/or expression is different from the sex assigned to them at birth (*e.g.* the sex listed on an original birth certificate). The OPM Guidance further explains that the term "transgender woman" typically is used to refer to someone who was assigned the male sex at birth but who identifies as a female. Likewise, OPM provides that the term "transgender man" typically is used to refer to someone who was assigned the female sex at birth but who identifies as male. Lastly, OPM recognizes that a person does not need to undergo any medical procedure to be considered a transgender man or a transgender woman. The OPM guidance is available at *https://www.opm.gov/policy-data-oversight/diversity-and-inclusion/reference-materials/addressing-sexual-orientation-and-gender-identity-discrimination-in-federal-civilian-employment.pdf.*

4. *What is nondiscrimination on property under the jurisdiction, custody, or control of GSA?*

a. Consistent with the interpretations issued by the EEOC, ED, DOJ, and OPM, the prohibition against sex discrimination in the Federal Management Regulation 41 CFR part 74 section 102–74.445 also prohibits discrimination due to gender identity, which includes discrimination based on an individual's transgender status.

b. Federal agencies occupying space under the jurisdiction, custody, or control of GSA must allow individuals to use restroom facilities and related areas consistent with their gender identity. As consistent with guidance by DOJ and ED, the self-identification of gender identity by any individual is sufficient to establish which restroom or other single-sex facilities should be used. As noted by ED, EEOC, DOJ and OPM, transgender individuals do not have to be undergoing or have completed any medical procedure, nor can they be required to show proof of surgery to be treated in accordance with their gender identity and obtain access to the restroom corresponding with their gender identity. Further, Federal agencies may not restrict only transgender individuals to only use single-occupancy restrooms, such as family or accessible facilities open to all genders. However, Federal agencies may make individual-user options available to all individuals who voluntarily seek additional privacy.

5. *Who should I contact for further information or direct questions regarding this bulletin?* Further information regarding this bulletin may be obtained from the GSA Office of Civil Rights by sending an email message to Mr. Dennis Oden, Director, Civil Rights Program Division at *dennis.oden@gsa.gov* or by calling 202–417–5711.

Dated: August 8, 2016.

Denise Turner-Roth,
Administrator.

[FR Doc. 2016–19450 Filed 8–17–16; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–8451]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date ("Susp.") listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW., Washington, DC 20472, (202) 646–4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/ cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IX				
California:				
Sacramento County, Unincorporated Areas.	060262	March 31, 1972, Emerg; March 15, 1979, Reg; October 20, 2016, Susp.	October 20, 2016	October 20, 2016.
San Joaquin County, Unincorporated Areas.	060299	February 23, 1973, Emerg; May 15, 1980, Reg; October 20, 2016, Susp.	......do*	Do.
Region X				
Alaska:				
Homer, City of, Kenai Peninsula Borough.	020107	N/A, Emerg; June 2, 2003, Reg; October 20, 2016, Susp.	......do	Do.
Kenai Peninsula Borough, Unincorporated Areas.	020012	June 19, 1970, Emerg; November 20, 1986, Reg; October 20, 2016, Susp.	......do	Do.
Seward, City of, Kenai Peninsula Borough.	020113	June 19, 1970, Emerg; November 20, 1986, Reg; October 20, 2016, Susp.	......do	Do.

*do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: August 11, 2016.

Michael M. Grimm,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2016–19667 Filed 8–17–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–8447]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP) that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and

a notice of this will be provided by publication in the **Federal Register** on a subsequent date. Also, information identifying the current participation status of a community can be obtained from FEMA's Community Status Book (CSB). The CSB is available at *http://www.fema.gov/fema/csb.shtm.*

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact Patricia Suber, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 400 C Street SW., Washington, DC 20472, (202) 646–4149.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase Federal flood insurance that is not otherwise generally available from private insurers. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits the sale of NFIP flood insurance unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. We recognize that some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue to be eligible for the sale of NFIP flood insurance. A notice withdrawing the suspension of such communities will be published in the **Federal Register**.

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, Section 1315, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region IV				
Georgia: Athens-Clarke County, Clarke County.	130040	December 5, 1973, Emerg; September 15, 1978, Reg; September 30, 2016, Susp.	September 30, 2016	September 30, 2016.
Region VI				
Oklahoma:				
Broken Arrow, City of, Tulsa and Wagoner Counties.	400236	November 27, 1974, Emerg; August 17, 1981, Reg; September 30, 2016, Susp.	September 30, 2016	September 30, 2016.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Catoosa, City of, Rogers and Wagoner Counties.	400185	January 8, 1976, Emerg; August 1, 1980, Reg; September 30, 2016, Susp.	......do*	Do.
Coweta, City of, Wagoner County	400216	March 21, 1978, Emerg; September 18, 1986, Reg; September 30, 2016, Susp.	......do	Do.
Rogers County, Unincorporated Areas.	405379	November 6, 1970, Emerg; November 5, 1971, Reg; September 30, 2016, Susp.	......do	Do.
Tulsa, City of, Osage, Rogers, Tulsa and Wagoner Counties.	405381	November 20, 1970, Emerg; August 13, 1971, Reg; September 30, 2016, Susp.	......do	Do.
Tulsa County, Unincorporated Areas.	400462	April 21, 1975, Emerg; September 16, 1982, Reg; September 30, 2016, Susp.	......do	Do.
Wagoner County, Unincorporated Areas.	400215	July 15, 1981, Emerg; December 2, 1988, Reg; September 30, 2016, Susp.	......do	Do.

*do = Ditto.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: August 9, 2016.

Michael M. Grimm,

Assistant Administrator for Mitigation, Federal Insurance and Mitigation Administration, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2016–19666 Filed 8–17–16; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 79

[MB Docket No. 12–108; FCC 15–156]

Accessibility of User Interfaces, and Video Programming Guides and Menus

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Second Report and Order* implementing provisions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) related to accessible user interfaces and video programming guides and menus. This document is consistent with the *Second Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the requirements.

DATES: 47 CFR 79.107(a)(5), (d), and (e), 79.108(d)(2), and (f), published at 81 FR 5921, February 4, 2016 are effective on August 18, 2016.

FOR FURTHER INFORMATION CONTACT: For additional information contact Cathy Williams, *Cathy.Williams@fcc.gov,* (202) 418–2918.

SUPPLEMENTARY INFORMATION: This document announces that, on August 9, 2016, OMB approved the information collection requirements contained in the Commission's *Second Report and Order,* FCC 15–156, published at 81 FR 5921, February 4, 2016. The OMB Control Number is 3060–1203. The Commission publishes this document as an announcement of the effective date of the requirements. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1203, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on August 9, 2016, for the new information collection requirements contained in the Commission's rules at 47 CFR 79.107(a)(5), (d), and (e), 79.108(d)(2), and (f).

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1203.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1203.

OMB Approval Date: August 9, 2016.

OMB Expiration Date: August 31, 2019.

Title: Section 79.107—User Interfaces Provided by Digital Apparatus; Section 79.108—Video Programming Guides and Menus Provided by Navigation Devices; Section 79.110—Complaint Procedures for User Interfaces, Menus and Guides, and Activating Accessibility Features on Digital Apparatus and Navigation Devices.

Form Number: N/A.

Respondents: Business or other for-profit entities; individuals or households; not-for-profit institutions; and state, local, or tribal Governments.

Number of Respondents and Responses: 4,245 respondents; 517,052 responses.

Estimated Time per Response: 0.0167 hours to 10 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement; Recordkeeping requirement.

Obligation to Respond: Voluntary. The statutory authority for this information collection is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and Sections 4(i), 4(j), 303(r), 303(u), 303(aa), 303(bb), and 716(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 303(u), 303(aa), 303(bb), and 617(g).

Total Annual Burden: 24,153 hours.

Total Annual Cost: $70,500.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries,'' which became effective on January 25, 2010. The Commission believes that it provides sufficient safeguards to protect the privacy of individuals who file complaints under 47 CFR 79.110.

Privacy Act Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: On November 20, 2015, in document FCC 15–156, the Commission released a *Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking,* MB Docket No. 12–108, FCC 15–156, adopting additional rules implementing Sections 204 and 205 of the Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) related to accessible user interfaces and video programming guides and menus. These rules are codified at 47 CFR 79.107 and 79.108. First, the *Second Report and Order* implements Section 204's requirement that both the ''appropriate built-in apparatus functions'' and the ''on-screen text menus or other visual indicators built in to the digital apparatus'' to access such functions be ''usable by individuals who are blind or visually impaired'' by relying on the existing definition of ''usable'' in Section 6.3(l) of the Commission's rules. The 6.3(l) definition of ''usable'' requires that ''individuals with disabilities have access to the full functionality and documentation for the product, including instructions, product information (including accessible feature information), documentation, bills and technical support which is provided to individuals without disabilities.'' In addition, the *Second Report and Order* adopts information, documentation, and training requirements comparable to those in Section 6.11 of the Commission's rules for entities covered by both Section 204 and Section 205 of the CVAA. The *Second Report and Order* also adopts consumer notification requirements for equipment manufacturers of digital apparatus and navigation devices that will require manufacturers to publicize the availability of accessible devices on manufacturer Web sites that must be accessible to those with disabilities. The *Second Report and Order* requires MVPDs, as well as manufacturers, to ensure that the contact office or person listed on their Web site is able to answer both general and specific questions about the availability of accessible equipment, including, if necessary, providing information to consumers or directing consumers to a place where they can locate information about how to activate and use accessibility features.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–19742 Filed 8–17–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

Hunting and Fishing

CFR Correction

In Title 50 of the Code of Federal Regulations, Parts 18 to 199, revised as of October 1, 2015, on page 545, §§ 32.70, 32.71, and 32.72 are reinstated to read as follows:

§ 32.70 Wyoming.

The following refuge units have been opened for hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Cokeville Meadows National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of ducks, dark geese, coots, mergansers, snipe, Virginia rail, Sora rail, sandhill crane, and mourning dove in accordance with State regulations and subject to the following conditions:

1. We prohibit hunting of migratory game birds in areas of the refuge indicated on the Cokeville Meadows National Wildlife Refuge Hunting Brochure and marked by signs as closed to all hunting or closed to migratory bird hunting.

2. You may only possess approved nontoxic shot while in the field (see § 32.2(k)).

3. We prohibit pits and permanent blinds.

4. You may use portable blinds or blinds constructed of natural dead vegetation (see § 27.51 of this chapter).

5. You must remove all decoys, shell casings, portable and temporary blinds, and other personal equipment (see §§ 27.93 and 27.94 of this chapter) from the refuge at the end of each day.

6. We prohibit possession or consumption of any alcoholic beverage while hunting (see § 32.2(j)).

7. Hunters may not enter closed areas to retrieve animals legally shot in an open area unless authorization has been given by a refuge employee or State Conservation Officer. Permission must be obtained from private landowners before attempting to retrieve game on private land.

8. Dogs must be leashed and/or under the direct control of a handler (see § 26.21(b) of this chapter). The use of dogs to find and retrieve legally harvested migratory game birds is allowed.

9. Hunters must park in a Designated Hunter Parking Area, as identified by signs.

10. Hunters are required to access and exit the hunting areas from a Designated Hunter Parking Area only. Drop off or pick up of hunters is prohibited except at Hunter Designated Parking Areas.

11. Hunters may only access the refuge 1 hour before legal sunrise until 1 hour after legal sunset.

B. Upland Game Hunting. We allow hunting of blue grouse, ruffed grouse, chuckar partridge, gray partridge, cottontail rabbits, snowshoe hares, squirrels (red, gray, and fox), red fox, raccoon, and striped skunk in accordance with State regulations and subject to the following conditions:

1. Conditions A2 through A7 and A9 through A11 apply.

2. We prohibit hunting of upland game species in areas of the refuge indicated on the Cokeville Meadows National Wildlife Refuge Hunting Brochure and marked by signs as closed to all hunting.

3. Dogs must be leashed and/or under the direct control of a handler. The use of dogs to find and retrieve legally harvested upland game birds, cottontail rabbits, and squirrels is allowed and encouraged. Dogs may not be used to chase red fox, raccoon, striped skunk, or any other species not specifically allowed in A8 or this paragraph.

4. Red fox, raccoon, and striped skunk may be taken on the refuge by licensed migratory

bird, big game, or upland/small game hunters from September 1 until the end of the last open big game, upland bird, or small game season. Red fox, raccoon, or striped skunk that is harvested must be taken into possession and removed from the refuge.

5. We prohibit hunting of sage grouse.

C. Big Game Hunting. We allow hunting of elk, mule deer, white-tailed deer, pronghorn, and moose in accordance with State regulations and subject to the following conditions:

1. Conditions A3 through A7 and A9 through A11 apply.

2. We prohibit hunting of big game in areas of the refuge indicated on the Cokeville Meadows National Wildlife Refuge Hunting Brochure and marked by signs as closed to all hunting.

3. You may hunt with the aid of a temporary tree stand that does not require drilling or nailing into the tree. All personal property, including temporary tree stands, must be removed at the end of each day (see §§ 27.93 and 27.94 of this chapter).

D. Sport Fishing. [RESERVED]

National Elk Refuge

A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. Hunters may hunt elk and bison on designated areas of the refuge subject to the following conditions:

1. We require refuge permits (issued by State of Wyoming).

2. Hunters may not be let out of vehicles on refuge roads.

3. Shooting from or across refuge roads and parking areas is not permitted.

D. Sport Fishing. Anglers may sport fish on the refuge in accordance with state law, as specifically designated in refuge publications.

Pathfinder National Wildlife Refuge

A. Migratory Game Bird Hunting. Hunting of geese, ducks and coots is permitted on designated areas of the refuge.

B. Upland Game Hunting. We allow hunting of sage grouse and cottontail rabbit on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

C. Big Game Hunting. Hunting of pronghorn antelope and deer is permitted on designated areas of the refuge.

D. Sport Fishing. [Reserved]

Seedskadee National Wildlife Refuge

A. Migratory Game Bird Hunting. We allow hunting of dark goose, duck, coot, merganser, dove, snipe, and rail on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. We prohibit hunting of migratory birds on the west side of the Green River between the south end of the Dunkle Unit and Highway 28. We post the boundary for this area with refuge signs stating "Area Closed to Migratory Bird Hunting".

2. We prohibit all hunting between Highway 28 and 0.8 miles (1.28 km) north of the refuge headquarters on the west side of the Green River. We post the boundary for this area with refuge signs stating "No Hunting Zone".

3. We open the refuge to the general public from ½ hour before legal sunrise to ½ hour after legal sunset. Waterfowl hunters may enter the refuge 1 hour before legal shooting hours to set up decoys and blinds.

4. Hunters must confine or leash dogs except when participating in a legal hunt (see § 26.21(b) of this chapter).

5. You must only use portable blinds or blinds constructed from dead and downed wood. We prohibit digging pit blinds.

6. You must remove portable blinds, tree stands, decoys, and other personal equipment (see § 27.93 of this chapter) from the refuge each day.

7. You must completely dismantle blinds constructed of dead and downed wood at the end of the waterfowl hunting season.

8. We only allow hunters to retrieve downed game from closed areas with consent from a refuge employee or State game warden.

9. You must unload and either case or dismantle all firearms (see § 27.42(b) of this chapter) when transporting them in a vehicle or boat under power.

B. Upland Game Hunting. We allow hunting of sage grouse, cottontail rabbit, jackrabbit, raccoon, fox, and skunk on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A2, A8, and A9 apply.

2. We open the refuge to the general public from ½ hour before legal sunrise to ½ hour after legal sunset.

3. Hunters must confine or leash dogs (see § 26.21(b) of this chapter) except when participating in a legal hunt for sage grouse, cottontail rabbit, or jackrabbit.

4. When using shotguns or muzzleloaders, you may only possess approved nontoxic shot (see § 32.2(k)) while in the field.

C. Big Game Hunting. We allow hunting of antelope, mule deer, and moose on designated areas of the refuge in accordance with State regulations subject to the following conditions:

1. Conditions A2, A8, A9, and B2 apply.

D. Sport Fishing. We allow fishing on the refuge in accordance with State regulations subject to the following conditions:

1. Condition B2 applies.

2. You must only launch or pick up trailered boats at the following boat ramps: Dodge Bottom, Hayfarm, Lombard, and Six-Mile.

3. We prohibit taking of mollusk, crustacean, reptile, and amphibian from the refuge.

[58 FR 5064, Jan. 19, 1993, as amended at 59 FR 55188, Nov. 3, 1994; 60 FR 62049, Dec. 4, 1995; 62 FR 47383, Sept. 9, 1997; 63 FR 2182, Jan. 14, 1998; 65 FR 30795, May 12, 2000; 67 FR 58952, Sept. 18, 2002; 69 FR 54362, 54473, Sept. 8, 2004; 76 FR 4000, Jan. 21, 2011; 79 FR 14844, Mar. 17, 2014]

§ 32.71 United States Unincorporated Pacific Insular Possessions.

The following refuge units have been opened to hunting and/or fishing, and are listed in alphabetical order with applicable refuge-specific regulations.

Johnston Island National Wildlife Refuge

A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

Midway Atoll National Wildlife Refuge

A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. [Reserved]

[58 FR 5064, Jan. 19, 1993, as amended at 59 FR 55188, Nov. 3, 1994; 61 FR 46399, Sept. 3, 1996; 63 FR 46922, Sept. 3, 1998; 65 FR 30795, May 12, 2000; 65 FR 56411, Sept. 18, 2000; 69 FR 54362, 54474, Sept. 8, 2004; 73 FR 33200, June 11, 2008]

§ 32.72 Guam.

We have opened the following refuge unit to hunting and/or fishing with applicable refuge-specific regulations.

Guam National Wildlife Refuge

A. Migratory Game Bird Hunting. [Reserved]

B. Upland Game Hunting. [Reserved]

C. Big Game Hunting. [Reserved]

D. Sport Fishing. Anglers may fish and collect marine life on designated areas of the refuge only in accordance with refuge and Government of Guam laws and regulations. The leaflet is available at the refuge headquarters and anglers are subject to the following additional conditions:

1. Anglers may be on the refuge from 8:30 a.m. until 5:00 p.m. daily, except Thanksgiving, Christmas, and New Year's Day.

2. We prohibit overnight camping on the refuge.

3. You may not possess surround or gill nets on the refuge.

4. We prohibit the collection of corals, giant clams (*Tridacna* and *Hippopus* spp.), and coconut crabs (*Birgus latro*) on the refuge.

5. We prohibit use of Self Contained Underwater Breathing Apparatus (SCUBA) to take fish or invertebrates.

6. We prohibit anchoring boats on the refuge.

7. We prohibit sailboards or motorized personal watercraft on the refuge.

[65 FR 30795, May 12, 2000, as amended at 66 FR 46363, Sept. 4, 2001; 67 FR 58953, Sept. 18, 2002; 69 FR 54362, Sept. 8, 2004]

[FR Doc. 2016–19797 Filed 8–17–16; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 81, No. 160
Thursday, August 18, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2012–BT–STD–0027]

RIN 1904–AC81

Energy Conservation Program: Energy Conservation Standards for Residential Dehumidifiers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Publication of determination.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes that the U.S. Department of Justice (DOJ) make a determination on the impact, if any, on the lessening of competition likely to result from a U.S. Department of Energy (DOE) proposed rule for energy conservation standards and that DOE publish the determination in the **Federal Register**. DOE published its final rule for energy conservation standards for dehumidifiers on June 13, 2016, and is publishing DOJ's August 5, 2015 determination on the proposed rule.

DATES: Date of DOJ determination—August 5, 2015.

FOR FURTHER INFORMATION CONTACT:

Mr. John Cymbalsky, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1692. Email: *dehumidifiers@EE.Doe.Gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *ElizabethKohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On June 13, 2016, DOE published a final rule amending energy conservation standards for dehumidifiers (81 FR 38338). Those amended standards were determined by DOE to be technologically feasible and economically justified and would result in the significant conservation of energy. The Energy Conservation and Policy Act of 1975 (42 U.S.C. 6291, *et seq.;* "EPCA"), as amended, requires that the Attorney General make a determination and analysis of the impact, if any, of any lessening of competition likely to result from a proposed standard, within 60 days of publication. (42 U.S.C. 6295(o)(2)(B)(ii)) EPCA also requires that DOE publish the determination and analysis in the **Federal Register**. *Id.*

DOE received the determination in response to the June 3, 2015 NOPR (80 FR 31645) from the Attorney General and the U.S. Department of Justice (DOJ) on August 5, 2015. DOE is publishing the text of DOJ's August 5, 2015 determination.

Issued in Washington, DC, on August 11, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

U.S. DEPARTMENT OF JUSTICE
Antitrust Division

WILLIAM J. BAER
Assistant Attorney General

Main Justice Building
950 Pennsylvania Avenue NW.
Washington, DC 20530–0001
(202) 514–2401 / (202) 616–2645 (Fax)

August 5, 2015

Anne Harkavy
Deputy General Counsel for Litigation, Regulation and Enforcement
U.S. Department of Energy
Washington, DC 20585

Re: Energy Conservation Standards for Residential Dehumidifiers Doc. No. EERE–2012–BT–STD–0027

Dear Deputy General Counsel Harkavy:

I am responding to your June 3, 2015, letter seeking the views of the Attorney General about the potential impact on competition of proposed energy conservation standards for residential dehumidifiers. Your request was submitted under Section 325(o)(2)(B)(i)(V) of the Energy Policy and Conservation Act, as amended (ECPA), 42 U.S.C. 6295(o)(2)(B)(i)(V), which requires the Attorney General to make a determination of the impact of any lessening of competition that is likely to result from the imposition of proposed energy conservation standards. The Attorney General's responsibility for responding to requests from other departments about the effect of a program on competition has been delegated to the Assistant Attorney General for the Antitrust Division in 28 CFR 0.40(g).

In conducting its analysis, the Antitrust Division examines whether a proposed standard may lessen competition, for example, by substantially limiting consumer choice or increasing industry concentration. A lessening of competition could result in higher prices to manufacturers and consumers.

We have reviewed the proposed standards contained in the Notice of Proposed Rulemaking (80 FR 31,646, June 3, 2015) and the related Technical Support Documents. We have also reviewed information presented at the public meeting held on the proposed standards on July 7, 2015. Based on this review, our conclusion is that the proposed energy conservation standards for residential dehumidifiers are unlikely to have a significant adverse impact on competition.

Sincerely,

William J. Baer

[FR Doc. 2016–19612 Filed 8–17–16; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2016–0311; FRL–9951–04–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; State of Utah; Revisions to the Utah Division of Administrative Rules, R307–300 Series; Area Source Rules for Attainment of Fine Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of portions of the fine particulate matter ($PM_{2.5}$) State Implementation Plan (SIP) and other general rule revisions submitted by the State of Utah. The revisions affect the Utah Division of Administrative Rules (DAR), R307–300 Series; Requirements for Specific Locations. The revisions had submission dates of May 9, 2013, May 20, 2014, September 8, 2015, and March 8, 2016. The March 8, 2016 submittal contains rule revisions to address our February 25, 2016 conditional approval of several Utah DAR R307–300 Series rules submitted on February 2, 2012, May 9, 2013, and May 20, 2014. These area source rules control emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors, which are sulfur dioxides (SO_2), nitrogen oxides (NO_X) and volatile organic compounds (VOC). Additionally, the EPA is proposing to approve the State's reasonably available control measure (RACM) determinations for the rule revisions that pertain to the $PM_{2.5}$ SIP. This action is being taken under section 110 of the Clean Air Act (CAA or Act).

DATES: Written comments must be received on or before September 19, 2016.

ADDRESSES: Submit your comments, identified by EPA–R08–OAR–2016–0311 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly-available docket materials are available at *http://www.regulations.gov* or in hard copy at the EPA Region 8, Office of Partnerships and Regulatory Assistance, Air Program, 1595 Wynkoop Street, Denver, Colorado, 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Crystal Ostigaard, Air Program, EPA, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6602, *ostigaard.crystal@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

a. *Submitting CBI.* Do not submit CBI to EPA through *http://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

b. *Tips for Preparing Your Comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. Regulatory Background

On October 17, 2006 (71 FR 61144), the EPA strengthened the level of the 24-hour $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS), lowering the primary and secondary standards from 65 micrograms per cubic meter ($\mu g/m^3$), the 1997 standard, to $35 \mu g/m^3$. On November 13, 2009 (74 FR 58688), the EPA designated three nonattainment areas in Utah for the 24-hour $PM_{2.5}$ NAAQS of 35 $\mu g/m^3$. These are the Salt Lake City, Utah; Provo, Utah; and Logan, Utah-Idaho nonattainment areas. The EPA originally designated these areas under CAA title I, part D, subpart 1, which required Utah to submit an attainment plan for each area no later than three years from the date of their nonattainment designations. These plans needed to provide for the attainment of the $PM_{2.5}$ standard as expeditiously as practicable, but no later than five years from the date the areas were designated nonattainment.

Subsequently, on January 4, 2013, the U.S. Court of Appeals for the District of Columbia held that the EPA should have implemented the 2006 $PM_{2.5}$ 24-hour standard based on both CAA title I, part D, subpart 1 and subpart 4. *NRDC* v. *EPA,* 706 F.3d 428 (D.C. Cir. 2013). Under subpart 4, nonattainment areas are initially classified as moderate, and moderate area attainment plans must address the requirements of subpart 4 as well as subpart 1. Additionally, CAA subpart 4 sets a different SIP submittal due date and attainment year. For a moderate area, the attainment SIP is due 18 months after designation, and the attainment year is the end of the sixth calendar year after designation. On June 2, 2014 (79 FR 31566), the EPA finalized the Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particulate ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) and 2006 $PM_{2.5}$ NAAQS (''the Classification and Deadline Rule''). This rule classified to moderate the areas that were designated in 2009 as nonattainment, and set the attainment SIP submittal due date for those areas at December 31, 2014. This rule did not affect the moderate area attainment date of December 31, 2015.

On March 23, 2015, the EPA proposed the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements (''$PM_{2.5}$ Implementation Rule''), 80 FR 15340, which partially addresses the January 4, 2013 court ruling. This proposed rule details how air agencies should meet the statutory SIP requirements that apply under subparts 1 and 4 to areas designated nonattainment for any $PM_{2.5}$ NAAQS, such as: General requirements for attainment plan due dates and attainment demonstrations; provisions for demonstrating reasonable further progress (RFP); quantitative milestones; contingency measures; Nonattainment New Source Review (NNSR) permitting programs; and RACM (including reasonably available control technology (RACT)), among other things. The statutory attainment planning requirements of subparts 1 and 4 were established to ensure that the following goals of the CAA are met: (i) That states implement measures that provide for attainment of the $PM_{2.5}$ NAAQS as expeditiously as practicable; and, (ii) that states adopt emissions reduction strategies that will be the most effective, and the most cost-effective, at reducing $PM_{2.5}$ levels in nonattainment areas.

The $PM_{2.5}$ Implementation Rule proposed a process for states to determine the control strategy for $PM_{2.5}$ attainment plans. The process consists of identifying all technologically and economically feasible control measures, including control technologies for all sources of direct $PM_{2.5}$ and $PM_{2.5}$ precursors in the emissions inventory for the nonattainment area which are not otherwise exempted from consideration for controls.[1] From that list of measures, the state must identify those that it can implement within four years of designation of the area (and which would thus meet the statutory requirements for RACM and RACT) and any ''additional reasonable measures,'' which the EPA is proposing in the $PM_{2.5}$ Implementation Rule to define as those technologically and economically feasible measures that the state can only implement on sources in the nonattainment area after the four-year deadline for RACM and RACT has passed. *See* proposed 40 CFR 51.1000. The EPA is currently in the process of preparing its final action on the proposed rule.

B. RACT and RACM Requirements for $PM_{2.5}$ Attainment Plans

Section 172(c)(1) of the Act (from subpart 1) requires that attainment plans, in general, provide for the implementation of all RACM as expeditiously as practicable (including RACT) and shall provide for attainment of the national primary ambient air quality standards. Section 189(a)(1)(C) (from subpart 4) requires moderate area attainment plans to contain provisions to assure that RACM is implemented no later than four years after designation.

The EPA stated its interpretation of the RACT and RACM requirements of subparts 1 and 4 in the 1992 General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, 57 FR 13498 (Apr. 6, 1992). For RACT, the EPA followed its ''historic definition of RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility.'' 57 FR 13541. Like RACT, the EPA has historically considered RACM to consist of control measures that are reasonably available, considering technological and economic feasibility. *See* $PM_{2.5}$ Implementation Rule, 80 FR 15373.

C. Utah's $PM_{2.5}$ Attainment Plan Submittals

Under section 110(k)(4) of the Act, the EPA may approve a SIP revision based on a commitment by the state to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. If we finalize our proposed conditional approval, Utah must adopt and submit the specific revisions it has committed to within one year of our finalization. If Utah does not submit these revisions within one year, or if we find Utah's revisions to be incomplete, or we disapprove Utah's revisions, this conditional approval will convert to a disapproval. If any of these occur and our conditional approval converts to a disapproval, that will constitute a disapproval of a required plan element under part D of title I of the Act, which starts an 18-month clock for sanctions, see section 179(a)(2), and the two-year clock for a federal implementation plan (FIP), see section 110(c)(1)(B).

Prior to the January 4, 2013 decision of the D.C. Circuit Court of Appeals, Utah developed a $PM_{2.5}$ attainment plan intended to meet the requirements of subpart 1. The EPA submitted written comments dated November 1, 2012, to the Utah Division of Air Quality (UDAQ) on Utah's draft $PM_{2.5}$ SIP, technical support document (TSD), and area source and other rules. After the court's decision, Utah amended its attainment plan to address requirements of subpart 4. On December 2, 2013, the EPA provided comments on Utah's revised draft $PM_{2.5}$ SIPs for the Salt Lake City and Provo areas, including the TSDs and rules in Section IX, Part H. These written comments from the EPA included some comments applicable to the rules we are proposing to act on today. The comment letters can be found within the docket for this action on *www.regulations.gov.*

In addition, Utah provided a commitment letter dated August 4, 2015, committing to revise R307–101, General Requirements; R307–312, Aggregate Processing Operations for $PM_{2.5}$ Nonattainment Areas; and R307–328, Gasoline Transfer and Storage. The EPA issued a conditional approval of the revisions on February 25, 2016 (81 FR 9343), based on the commitment letter. In that action, the EPA also approved other area source rules and conditionally approved the determination of RACM for these specific rules from Utah's moderate $PM_{2.5}$ SIPs. When the EPA takes final action on today's proposal, it will complete the action on the revisions described earlier and the determination of RACM for these specific rules from Utah's moderate $PM_{2.5}$ SIPs.

Furthermore, Utah submitted revisions to R307–302, Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties on May 9, 2013, May 20, 2014, and September 8, 2015. With this action, the EPA is proposing to conditionally approve R307–302 based on the May 19, 2016 commitment letter submitted by UDAQ. This rule is applicable to the Utah SIPs for $PM_{2.5}$ nonattainment areas.

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[1] Such exemptions could be due to a demonstrated lack of significant contribution of a certain $PM_{2.5}$ precursor to the area's elevated $PM_{2.5}$ concentrations or due to a presumptive determination that a certain source category contributes only a *de minimis* amount toward $PM_{2.5}$ levels in a nonattainment area.

III. EPA's Evaluation of Utah's Submittals

SIP revisions for R307–101 were submitted on May 9, 2013, May 20, 2014, and March 8, 2016. For R307–312, revisions were submitted on May 9, 2013, and March 8, 2016. Revisions for R307–328 were submitted on February 2, 2012, and March 8, 2016. In an August 4, 2015 commitment letter, UDAQ committed to revise R307–101, R307–312 and R307–328 and EPA conditionally approved these rules on February 25, 2016 (81 FR 9343). Additionally, SIP revisions were submitted for R307–302 on May 9, 2013, May 20, 2014, and September 8, 2015. However, the EPA identified an issue with R307–302 relating to startup, shutdown, and malfunction provisions, and Utah provided a commitment letter dated May 19, 2016, that contains a commitment to revise R307–302 to address this issue. The EPA is proposing conditional approval of the three submittals based on Utah's May 19, 2016 commitment letter. These final rule submissions, except for revisions to R307–101 and R307–328, are submitted as RACM components of the $PM_{2.5}$ SIP submitted by the State of Utah. The area source rules for RACM, R307–302 and R307–312, provide specific requirements for emissions of direct $PM_{2.5}$, VOCs, NO_X, and SO_2 from a few specific categories of sources. All of these rule revision submittals and commitment letters can found on *www.regulations.gov.*

The following is a summary of EPA's evaluation of the rule revisions. In general, we reviewed the rules for: enforceability; RACM requirements (for those rules submitted as RACM); and other applicable requirements of the Act.

1. R307–101, General Requirements

Rule R307–101 provides general requirements that pertain to all UDAQ R307 rules, which constitute the basis for control of air pollution sources in the State of Utah. The primary section is R307–101–2 Definitions, which provide definitions that are applicable to all R307 rules, except for those definitions as specified in individual rules. UDAQ committed in its letter dated August 4, 2015, to remove the definition of "$PM_{2.5}$ precursor," as that definition is not used for regulatory purposes in Utah's SIP. Additionally, a "Nonsubstantive Rule Amendment" was made by Utah to correct a citation to the United States Code of Federal Regulations 40 CFR 51.100. In accordance with Utah Code Title 19, Chapter 2, Air Conservation Act, Utah Code Title 63G, Chapter 3, Administrative Rulemaking Act, and Utah Administrative Code, R15, Administrative Rules, this change was made without public comment, as appropriate for a non-substantive change. This submittal was made by UDAQ on May 20, 2014, and was included in the conditional approval finalized by the EPA on February 25, 2016. With UDAQ's March 8, 2016 submittal, the definition "$PM_{2.5}$ precursor" was removed, which satisfies the commitment letter on which the EPA's conditional approval was based and completes the EPA's actions on the May 9, 2013 and May 20, 2014 submittals for R307–101 from UDAQ. (February 25, 2016; 81 FR 9343.)

Additionally, UDAQ submitted to the EPA other revisions to R307–101–2 on March 8, 2016. These revisions included revisions to the "Clean Air Act" definition and "Maintenance Area" definition, specific to coarse particulate matter (PM_{10}). The definition for "Clean Air Act" was revised to mean "federal Clean Air Act as found in 42 U.S.C. Chapter 85." The revisions to the "Maintenance Area" definition, specific to PM_{10}, updated the date on when the Board adopted the maintenance plans for Salt Lake County, Utah County, and Ogden City to "December 2, 2015."

The Board proposed for public comment the removal of the definition "$PM_{2.5}$ Precursor" in R307–101–2 on October 7, 2015, and the public comment period was held from November 1, 2015, through December 1, 2015. No comments were received and no hearing was requested for this comment period. The Board adopted the revision to R307–101–2 on February 3, 2016, and it became effective on February 4, 2016. Amendments to R307–101–2 were proposed by the Board on December 2, 2015, and were out for a comment period of January 1, 2016, through February 2, 2016. No comments were received and no hearing was requested for this comment period. The final revision of Rule R307–101–2 was adopted by the Board on March 2, 2016, and became effective on March 3, 2016, and is applicable to the entire state of Utah.

With UDAQ's March 8, 2016 submittal, section R307–101 was revised to represent what was in the commitment letter, which satisfies the EPA's conditional approval. Additionally, the EPA is proposing to approve the other definition revisions to R307–101 as stated earlier.

2. R307–302, Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties

Rule R307–302 is an existing rule that was approved by the EPA on February 14, 2006 (71 FR 7679). This rule establishes emission standards for fireplaces and solid fuel burning devices used in residential, commercial, institutional and industrial facilities and associated outbuilding used to provide comfort heating.

The Board proposed revisions to R307–302 for public comment on October 7, 2015, with the public comment period held from November 1 to December 1, 2015. No comments were received and no public hearing was requested. The Board adopted the latest revision to R307–302 on February 3, 2016, and it became effective on February 4, 2015.

The EPA requested that UDAQ commit to revise R307–302–5 which states "R307–302–5. Opacity for Heating Appliances. Except during no-burn periods as required by R307–302–2 and 4, visible emissions from solid fuel burning devices and fireplaces shall be limited to a shade or density no darker than 20% opacity as measured by EPA Method 9, except for the following: (1) An initial fifteen minute start-up period, and (2) A period of fifteen minutes in any three-hour period in which emissions may exceed the 20% opacity limitation for refueling." The requested change is to provide continuous controls to cover startup, shutdown, and malfunction requirements. UDAQ committed in its May 19, 2016 letter to add continuous controls that extend to startup, shutdown, and malfunction, by establishing a prohibition on fuel types that can't be burned in a solid fuel burning device at any time.

Utah's RACM and rule analysis can be found in the docket posted on regulations.gov. For direct $PM_{2.5}$, the RACM analysis considered the effect of lowering the wood burning prohibition action level from 35 $\mu g/m^3$ to 25 $\mu g/m^3$ and alternatively to 15 $\mu g/m^3$, and the sales restriction of solid fuel devices to only EPA-approved wood stoves. In choosing a wood burning prohibition action level, UDAQ determined that 25 $\mu g/m^3$ was representative of RACM, and chose to establish the 15 $\mu g/m^3$ action level as a contingency measure. UDAQ also established a sales restriction on solid fuel devices to EPA-approved wood stoves, with a phase-in schedule of 90% by 2014, 92.5% by 2017, and 95% by 2019.

The EPA agrees with the revisions that UDAQ has committed to and is proposing a conditional approval of the revisions to R307–302; and also proposing to find that R307–302, as revised, constitutes RACM for the Nonattainment Areas for Solid Fuel Burning Devices in Box Elder, Cache, Davis, Salt Lake, Tooele, and Weber Counties for the Utah $PM_{2.5}$ SIP, with the commitment to adopt measures to address startup, shutdown, and malfunction events.

3. R307–312, Aggregate Processing Operations for $PM_{2.5}$ Nonattainment Areas

R307–312 establishes emission standards for sources in the aggregate processing industry, including aggregate processing equipment, hot mix asphalt plants, and concrete batch plants. The rule applies to all crushers, screens, conveyors, hot mix asphalt plants, and concrete batch plants located within a $PM_{2.5}$ nonattainment and maintenance area as defined in 40 CFR 81.345 (July 1, 2011). The provisions of R307–312 do not apply to temporary hot mix asphalt plants.

The EPA requested that UDAQ commit to revise R307–312–5(2)(a) which states "Production shall be determined by scale house records or equivalent method on a daily basis." The EPA requested that UDAQ identify what could be used as an "equivalent method" in its rule. UDAQ committed in their August 4, 2015 letter to remove "equivalent method" and state "Production shall be determined by scale house records, scale house or belt scale records, or manifest statements on a daily basis." The EPA finalized this commitment and conditional approval on February 25, 2016 (81 FR 9343). With UDAQ's March 8, 2016 submittal, section R307–312–5(2)(a) was revised to represent what was in the commitment letter, which satisfies the condition specified in the conditional approval and completes the EPA's action on the May 9, 2013 submittal for R307–312 from UDAQ.

The Board proposed revisions to R307–312 for public comment on October 7, 2015, with the public comment period held from November 1 to December 1, 2015. No comments were received and no public hearing was requested. The Board adopted the revision to R307–312 on February 3, 2016, and it became effective on February 4, 2016.

Utah's RACM and rule analysis can be found in the docket posted on *regulations.gov.* For direct $PM_{2.5}$, the RACM analysis considered the following as technologically feasible control measures for aggregate processing: water application, enclosures, and add-on control devices, including a baghouse, electrostatic precipitator, wet scrubber, and cyclone. UDAQ considered enclosures and add-on controls to not be economically feasible for aggregate processing equipment and determined water application to be RACM at a cost-effectiveness of $650/ton. However, water application was not considered feasible for the one existing concrete batch plant; and UDAQ determined RACM to be the existing baghouse and fabric filter controls. The RACM analysis considered the following add-on controls as technologically feasible for filterable particulate matter (PM) from hot mix asphalt plants: baghouse, electrostatic precipitator, wet scrubber, and cyclone. UDAQ did not find any controls technologically feasible for condensable PM. The analysis considered all the add-on controls to be economically feasible; and UDAQ correspondingly set a direct $PM_{2.5}$ limit of 0.024 gr/dscf. For NO_X, UDAQ considered low-NO_X burners, NSCR, SCR, and use of natural gas to be technically feasible. UDAQ determined that use of natural gas was RACM.

The EPA agrees with the revisions that UDAQ has made to R307–312 and is proposing approval. Additionally, the EPA is proposing to find that R307–312, as revised, constitutes RACM for the Nonattainment Areas for Aggregate Processing Operations for the Utah $PM_{2.5}$ SIP. This proposal is based on our review of the RACM analysis provided in Utah's $PM_{2.5}$ SIP.

4. R307–328, Gasoline Transfer and Storage

R307–328 establishes controls of gasoline vapors during the filling of gasoline cargo tank and storage tanks in Utah. The rule is based on federal control technique guidance documents. This requirement is commonly referred to as stage I vapor recovery.

The EPA requested that UDAQ commit to revise R307–328–4(6) which stated "A gasoline storage and transfer installation that receives inbound loads and dispatches outbound loads ("bulk plant") need not comply with R307–328–4 if it does not have a daily average throughput of more than 3,900 gallons (15,000 or more liters) of gasoline based upon a 30-day rolling average. Such installations shall on-load and off-load gasoline by use of bottom or submerged filling or alternate equivalent methods. The emission limitation is based on operating procedures and equipment specifications using RACT as defined in EPA documents EPA 450/2–77–026 October 1977, "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals," and EPA–450/2–77–035 December 1977, "Control of Volatile Organic Emissions from Bulk Gasoline Plants." The design effectiveness of such equipment and the operating procedures must be documented and submitted to and approved by the executive secretary." The requested change was to remove the "alternative equivalent method" from this section. UDAQ committed in their August 4, 2015 letter to remove "alternative equivalent method" and state: "A gasoline storage and transfer installation that receives inbound loads and dispatches outbound loads ("bulk plant") need not comply with R307–328–4 if it does not have a daily average throughput of more than 3,900 gallons (15,000 or more liters) of gasoline based upon a 30-day rolling average. Such installations shall on-load and off-load gasoline by use of bottom or submerged filling. The emission limitation is based on operating procedures and equipment specifications using RACT as defined in EPA documents EPA 450/2–77–026 October 1977, "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals," and EPA–450/2–77–035 December 1977, "Control of Volatile Organic Emissions from Bulk Gasoline Plants." The design effectiveness of such equipment and the operating procedures must be documented and submitted to and approved by the executive secretary."

The EPA finalized this commitment and conditional approval on February 25, 2016 (81 FR 9343). The Board proposed revisions to R307–328 for public comment on October 7, 2015, with the public comment period held from November 1 to December 1, 2015. No comments were received and no public hearing was requested. The Board adopted the revision to R307–328 on February 3, 2016, and it became effective on February 4, 2016. With UDAQ's March 8, 2016 submittal, the section, R307–328–4(6), was revised to represent what was in the commitment letter, which satisfies the EPA's conditional approval and completes the EPA's action on the February 2, 2012 submittal for R307–328 from UDAQ. Therefore, the EPA is proposing approval of the rule, R307–328.

IV. What action is EPA proposing?

The EPA is proposing approval of the revisions to Administrative Rules R307–101–2, along with the revisions in R307–300 Series; Requirements for Specific Locations (Within Nonattainment and Maintenance Areas), R307–302 (conditional approval, described later), R307–312, and R307–328 for incorporation to the Utah SIP as submitted by the State of Utah on May

9, 2013, May 20, 2014, September 8, 2015, and March 8, 2016. This proposal will complete the EPA's February 25, 2016 (81 FR 9343) conditional approval action on the February 2, 2012, May 9, 2013, and May 20, 2014 submittals for R307–101, R307–312, and R307–328 from UDAQ. We are proposing to approve Utah's determination that R307–312 constitutes RACM for the Utah $PM_{2.5}$ SIP; however, we are not proposing to determine that Utah's $PM_{2.5}$ attainment plan has met all requirements regarding RACM under subparts 1 and 4 of Part D, title I of the Act. We intend to act separately on the remainder of Utah's $PM_{2.5}$ attainment plan.

The EPA is proposing to conditionally approve revisions to R307–302 and conditionally approve Utah's determination that R307–302 constitutes RACM for the Utah $PM_{2.5}$ SIP for solid fuel burning devices in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah, and Weber Counties. As stated earlier, we are not proposing to determine that Utah's $PM_{2.5}$ attainment plan has met all requirements regarding RACM under subparts 1 and 4 of part D, title I of the Act. Under section 110(k)(4) of the Act, the EPA may approve a SIP revision based on a commitment by the State to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. On May 19, 2016, Utah submitted a commitment letter to adopt and submit specific revisions within one year of our final action on these submittals; specifically to include continuous controls to cover start-up, shutdown, and malfunction requirements. If we finalize our proposed conditional approval, Utah must adopt and submit the specific revisions it has committed to within one year of our final action. If Utah does not submit these revisions within one year, or if we find Utah's revisions to be incomplete, or we disapprove Utah's revisions, this conditional approval will convert to a disapproval. If any of these occur and our conditional approvals convert to a disapproval, that will constitute a disapproval of a required plan element under part D of title I of the Act, which starts an 18-month clock for sanctions, see CAA section 179(a)(2), and the two-year clock for a FIP, see CAA section 110(c)(1)(B).

V. Consideration of Section 110(l) of the CAA

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and RFP toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state shall be adopted by the state after reasonable notice and public hearing.

The Utah SIP revisions that the EPA is proposing to approve do not interfere with any applicable requirements of the Act. The DAR section R307–300 Series submitted by the UDAQ on February 2, 2012, May 9, 2013, May 20, 2014, September 8, 2015, and March 8, 2016, are intended to strengthen the SIP and to serve as RACM for certain area sources for the Utah $PM_{2.5}$ SIP. Therefore, CAA section 110(l) requirements are satisfied.

VI. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the UDAQ rules promulgated in the DAR, R307–300 Series as discussed in section III of this preamble. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and/or at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian Country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organization compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 5, 2016.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

[FR Doc. 2016–19775 Filed 8–17–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 4, 9, and 20

[WT Docket No. 16–240; FCC 16–95]

Harmonizing and Streamlining Rules Concerning Requirements for Licensees to Overcome a CMRS Presumption

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) proposes and seeks comment on revising the Commission's rules governing commercial mobile radio services. We propose to end the presumption contained in the Commission's rules that all applicants and licensees in the services identified in that section intend to license their facilities as commercial mobile radio service ("CMRS") operations by eliminating that section and making related rule changes.

DATES: Submit comments on or before October 17, 2016 and reply comments on or before November 16, 2016.

ADDRESSES: You may submit comments, identified by WT Docket No. 16–240, by any of the following methods:

- *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.
- *Mail:* All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Wilbert E. Nixon Jr., *Wilbert.nixon@fcc.gov,* Mobility Division, Wireless Telecommunications Bureau, (202) 418–0985, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in WT Docket No. 16–240, FCC 16–95, adopted July 27, 2016, and released July 28, 2016. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, (202) 488–5300, facsimile (202) 488–5563, or via email at *fcc@bcpiweb.com.* The full text may also be downloaded at: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0728/FCC-16-95A1.pdf.* Alternative formats are available to persons with disabilities by sending an email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Comment Filing Instructions

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415 and 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS"). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
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People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis

I. Introduction

A. Proposal To Revise Part 20 and Make Related Changes

1. In this document, the Commission proposes amendments to the Part 20 rules to update, streamline, and modernize them, including harmonizing the regulatory treatment of the various mobile radio services with regard to how applicants must report the regulatory classification of their facilities and easing spectrum acquisition in the secondary market consistent with suggestions received as part of the Commission's process reform efforts. Specifically, we tentatively conclude that eliminating the CMRS presumption for those operators of services currently identified in section 20.9 would streamline application preparation and processing, and promote comparable treatment of wireless applicants and licensees. Under the proposed elimination of section 20.9 contained in this *NPRM,* applicants and licensees could simply inform the Commission in initial, modification, or assignment applications of their regulatory status. We seek comment on our tentative conclusions, as well as the costs and benefits of our proposed approach.

2. This proposed approach would shorten the period for processing of a number of applications, as well as eliminate the obligation of certain licensees and applicants in the services specified in section 20.9 to make a showing, even if brief, regarding their intent to operate on a non-common carrier or private basis. We tentatively conclude that shortening the period for application processing as well as lightening the regulatory burden currently imposed on licensees and

applicants that apply to operate as non-CMRS providers in the services listed in section 20.9 will lead to more efficient and timely use of the licensed spectrum, without imposing any more regulatory burdens than those necessary for the Commission to oversee spectrum usage. We seek comment on this tentative conclusion.

3. In addition, we believe that the proposed elimination of section 20.9 would help to eliminate uneven and disparate regulation of wireless applicants and licensees. As we discussed above, the regulatory filing requirements and potential lengthening of the application processing period imposed by section 20.9 on licensees and applicants desiring to use spectrum identified in this rule section on a non-CMRS basis are not imposed uniformly on all spectrum and services, particularly when compared with those services for which service rules have been adopted in recent years by the Commission. We tentatively conclude that the public interest would be served by treating similarly situated entities on a more equitable, comparable basis.

4. The Commission, in adopting section 20.9, conducted an extensive review of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Title VI, section 6002(b) (''1993 OBRA''), amending the Communications Act of 1934 and codified at 47 U.S.C. 332(c), its legislative history, and developments in regulation of wireless services. The Commission noted that Congress ''replaced the common carrier and private radio definitions that evolved under the prior version of Section 332 of the Act with two newly defined categories of mobile services: Commercial mobile radio service (CMRS) and private mobile radio service (PMRS),'' and ''replaced traditional regulation of mobile services with an approach that brings all mobile service providers under a comprehensive, consistent regulatory framework and gives the Commission flexibility to establish appropriate levels of regulation for mobile radio services providers.'' Two Congressional objectives appeared to drive these statutory changes: (1) ''To ensure that similar [mobile] services would be subject to consistent regulatory classification[;]'' and (2) to ''establish[ ] and administer[ ] for CMRS providers'' ''an appropriate level of regulation.''

5. The Commission also noted that Congress was concerned with the ''disparate regulatory treatment'' that had evolved across services, observing that Congress's intent that the Commission establish consistent regulations was reflected in the statutory requirement that any service that amounted to a ''functional equivalent'' of CMRS be treated as CMRS even if the service did not fit the strict definition of that service. At the same time, the Commission ''anticipat[ed] that very few mobile services that do not meet the definition of CMRS will be a close substitute for a [CMRS].'' The Commission therefore decided to ''presume that a mobile service that does not meet the definition of CMRS is a [PMRS].'' To rebut the presumption, a challenger to a PMRS claim was required to follow the method and meet the criteria that the Commission prescribed for demonstrating that the carrier claiming PMRS status was actually providing the functional equivalent of CMRS. Section 20.9(a)(14) memorializes this presumption and the criteria for the showing that someone challenging the presumption would need to make to overcome it (*i.e.*, to demonstrate that an applicant purporting to offer PMRS is actually offering services that are the functional equivalent of CMRS and thus warrants the corresponding level of regulation). This rebuttable presumption has served as a reasonable mechanism for classifying a service as PMRS or CMRS for filing purposes, consistent with the statutory definitions. It does not, however, constitute the only approach for identifying whether a provider's proposed or existing service should be classified one way or another, and changes may now be warranted based on the development of CMRS and PMRS services and our experience with the application of the presumption, such as how parties have used it, how often and how successfully it has been challenged, and whether it tends to streamline the licensing processes or encumber them.

6. As discussed above, the substantial changes that have occurred in the wireless industry since the rule's adoption suggest that it is now an appropriate time to reexamine the need for the presumption, and this *NPRM* seeks comment on its continued use and on other possible approaches. There has been increasing demand for PMRS use of spectrum and other rule changes permitting more flexible uses of spectrum in ways that section 20.9 does not encourage (*i.e.*, by requiring the filing of a waiver). We observe that the section 20.9 construct, which treats certain mobile services differently depending upon where they fall in our rules, can result in application processing inefficiencies and delays for the affected services. Given changed circumstances since the Commission adopted section 20.9, we tentatively conclude that eliminating the rule would help to further Congressional intent that the Commission avoid ''disparate regulatory treatment'' across mobile radio services.

7. We also observe that section 20.3 of the rules defines ''commercial mobile radio service'' to include a mobile service that is ''[t]he functional equivalent of a mobile service described in paragraph (a) of this section, including a mobile broadband Internet access service as defined in section 8.2 of this chapter.'' We therefore believe that section 20.3 of the rules, either in its current form or as we propose below to modify it, and in combination with other Commission rules and processes, helps ensure that the Commission will continue to treat as CMRS any service that amounts to a ''functional equivalent'' of CMRS. We anticipate that the combined effect of our proposals to eliminate section 20.9 of the rules and rely on the CMRS definition in section 20.3 will continue to treat services operating as functionally equivalent to CMRS in the same way as we treat CMRS, while eliminating minor processing differences across types of wireless applications.

8. We seek comment on these proposals, including other ways to overcome the processing inefficiencies discussed above. For example, would amending section 20.9 help to address these concerns more effectively than eliminating the rule in its entirety? We seek comments on such alternatives, if any, as well as their costs and benefits.

9. We note that the elimination of one subsection of section 20.9 was recently endorsed by commenters responding to the Wireless Telecommunications Bureau's Public Notice regarding the applicability of paging and radiotelephone rules and soliciting comment on the need for technical flexibility. For example, the Land Mobile Communications Council stressed that eliminating section 20.9(a)(6) would be consistent with the eligibility standard now reflected in section 22.7 and ''would eliminate an unnecessary burden on applicants and the FCC staff.'' Both the BloostonLaw Licensees and Nebraska Public Power District agreed that section 20.9(a)(6) should be eliminated. We believe that the reasons used to support arguments in favor of the elimination of section 20.9(a)(6) apply to removal of section 20.9 in its entirety and seek comment on this view.

10. Regardless of what action we take regarding our proposal to eliminate section 20.9, we tentatively conclude

that we should make a technical corrective edit to section 9.3 of the Commission's rules which includes definitions to be used in connection with the provision of interconnected Voice over Internet Protocol services. Specifically, section 9.3 defines "CMRS" as "Commercial Mobile Radio Service, as defined in section 20.9 of this chapter." We propose that this definition refer instead to section 20.3, which is the definition section for Part 20 and includes a definition of "commercial mobile radio service."

11. We also find that a corrective edit to section 4.3(f) of our rules is appropriate, whether or not we adopt the proposal to eliminate section 20.9. Section 4.3(f), which defines "wireless service providers" subject to outage reporting requirements, includes a cross-reference to section 20.9 for a definition of "commercial mobile radio service." As discussed above with respect to section 9.3, we propose instead that the definition in this section refer to the definition of "commercial mobile radio service" in section 20.3.

12. We also propose to eliminate section 20.7, which includes a list of services defined as falling within the definition of "mobile services" as used in sections 3(n) and 332 of the Communications Act. As with section 20.9, in light of the mobile services created since the Commission adopted this rule, section 20.7 is under-inclusive insofar as it does not include all the services that in fact are "mobile services" under the statutory language. Eliminating section 20.7 would not change the definition of "mobile service" contained in section 20.3, the Definitions section of Part 20. We tentatively conclude that section 20.7 no longer appears to serve a useful purpose, and we seek comment on that tentative conclusion and our proposal to eliminate this section.

13. As we noted above, section 20.3 defines the term "commercial mobile radio service," and includes as part of that definition a mobile service that is "[t]he functional equivalent of a mobile service described in paragraph (a) of this section." Section 20.9(a)(14), which would be deleted if we were to eliminate section 20.9 in its entirety, enumerates some of the factors that the Commission may consider in determining whether a mobile service is the functional equivalent of a commercial mobile radio service in cases where the service otherwise does not meet the definition of CMRS and the resulting presumptive classification of the service as PMRS has been challenged. In this regard, section 20.9(a)(14) lays out the process for making such a challenge—*i.e.,* a challenger may attempt to defeat this presumptive classification by filing a petition for declaratory ruling challenging a mobile service provider's regulatory treatment as a private mobile radio service. We ask interested parties to comment on whether retaining section 20.9(a)(14), or any of its subsections, would be useful to maintain as a practical and procedural set of guidelines for both the providers of mobile services and the Commission when applying the definitions of CMRS and PMRS, and whether we should move this language to section 20.3, as a subsection under the definition of commercial mobile radio service, or to another section in part 20.

14. We tentatively conclude that nothing in the proposed elimination of sections 20.7 or 20.9 would affect the definition of "commercial mobile radio service" contained in section 20.3 of our rules or the obligations imposed on providers of commercial mobile radio services. Indeed, we wish to reiterate that we do not intend to change either any substantive CMRS regulatory policies with our proposal or other substantive policies pursuant to existing Commission rules affecting the licensees in the services that an amended section 20.3 would address. Rather, our proposal in this rulemaking regarding section 20.9 is narrow and we intend for it to eliminate an unnecessary burden upon certain licensees and applicants in services named in that section. There would be no change in the obligations imposed upon entities providing commercial or private mobile radio service. In this regard, we observe that we have the necessary authority, independent of the requirements of section 20.9, to take enforcement action against a licensee that intentionally tries to avoid CMRS regulation by misrepresenting that its service is or will be operated on a "non-common carrier" or "private" basis (*e.g.,* by selecting such status in an application filed with the Commission), when its service offering in fact falls within the CMRS definition and warrants being subject to the appropriate regulations as a result of that status. We also observe that even if we eliminate the section 20.9(a)(14) PMRS presumption for providers whose service does not meet the strict CMRS definition, potential challengers would continue to have avenues available to challenge an applicant's or licensee's designation of its service as "non-common carrier" or "private," (*e.g.,* by filing a pleading challenging an application or its grant, based on the charge that the applicant's claimed regulatory status was incorrect). Similarly, although those that might seek to challenge an application filed under section 20.9(b) of the rules might lose the 30-day notice period currently afforded by public notice, other avenues to challenge such applications would remain available. We request comment on our tentative conclusions.

15. Section 20.9(a)(10) includes certain mobile satellite services and section 20.9(a)(13) includes certain FM subcarrier communications within the definition of "commercial mobile radio service." At this time, we see no reason not to treat these services the same as the other services identified in section 20.9, but we seek comment on any potential impact.

16. We request comment on the necessary changes we need to make to our forms. For example, at present, Form 603 does not include the option for a proposed assignee/transferee to indicate a different regulatory status for a license that is the subject of a proposed transaction. We believe that, if we adopt revised rules as proposed above, we also will need to revise Form 603 to permit a proposed assignee or transferee to indicate a change in regulatory status.

17. In connection with revising our forms consistent with whatever action we take in this proceeding, at present, many of our forms provide the option of selecting one of the following statuses: "common carrier;" "non-common carrier;" or "private, internal communications." The existing terms derive from past usage about categories of mobile wireless operations. We seek comment on whether we should replace these existing regulatory status terms in the forms to reflect the CMRS/PMRS terminology. We note that both CMRS and PMRS are defined terms in section 20.3, and are terms consistent with section 332 of the Communications Act. We tentatively conclude that using the existing terms of "common carrier," "non-common carrier," and "private, internal communications" tend to be confusing and that usage of the terms "CMRS" and "PMRS" with accompanying definitions in the form instructions would reflect more accurately the rules and statutory provisions on which the forms are based and thus be easier to understand. We seek comment on this tentative conclusion.

B. Initial Regulatory Flexibility Certification

18. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-

and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

19. In this NPRM, we seek comment on proposals to streamline and harmonize our requirements for wireless licensees and applicants. We address a proposal to revise the Commission's Part 20 rules governing commercial mobile radio services. We propose to end the presumption contained in section 20.9 of the Commission's rules that all applicants and licensees in the services identified in that section intend to license their facilities as commercial mobile radio service ("CMRS") operations by eliminating that section and making related rule changes. In addition, we propose to simplify the process by which an applicant or license in the affected services indicates its regulatory status in the relevant application forms.

20. We initiate this proceeding as a part of the Commission's process reform initiative and to update and modernize our Part 20 and related wireless service rules. These proposed revisions to part 20 are intended to eliminate the burden on applicants and licensees—including small entities—that desire to operate on a non-CMRS basis of having to overcome the presumption that their service offerings are CMRS.

21. The closest estimate of the number of small businesses that may potentially be affected by our proposed rule changes is the SBA's "Wireless Telecommunications Carriers (except Satellite)" category. This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via airwaves. Establishments in this industry have spectrum licenses and provide services using spectrum, such as wireless phone services, paging services, wireless Internet access, and wireless video services—which are the types of services provided by the different types of licensees listed in section 20.9 of the Commission's rules. For this category, a business is considered small if it has 1,500 or fewer employees. For this category, census data for 2007 show that were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had 999 or fewer employees and 15 had 1,000 or more. Thus, under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our proposed action. We note that using this category to estimate the number of small entities potentially affected by our proposed action likely overstates the number of entities (small or otherwise) that in fact might be affected by our proposed rule changes since there are some entities falling in the wireless telecommunications carriers (except satellite) carrier that have no operations potentially affected by any of the changes we propose to make to part 20.

22. We have determined that the impact on the entities affect by the proposed rule changes will not be significant. The most significant effect of the proposed rule change is to allow the affected entities, including small entities, greater flexibility in choosing their regulatory status as common carrier/CMRS or non-common carrier/private/PMRS and to reduce regulatory delays in the processing of applications that would implement such choices. We expect the impact of the proposed amendments to be a reduction in processing time regarding applications related to the entity's preferred regulatory status. We believe that this reduction in processing time and also perhaps in paperwork will be minimal but beneficial to all affected entities, including small businesses.

23. The Commission therefore certifies, pursuant to the RFA, that the proposals in this NPRM, if adopted, will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in the NPRM require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the NPRM, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA. In addition, a copy of the NPRM and this initial certification will be published in the **Federal Register**.

II. Procedural Matters

A. Ex Parte Presentations

24. *Permit-But-Disclose.* The proceeding this *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system ("ECFS") available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Filing Requirements

25. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

III. Initial Regulatory Flexibility Certification

26. The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Accordingly, we have prepared an Initial Regulatory Flexibility Certification ("IRFC") of the possible significant economic impact on small entities of the policies and rules proposed in this *NPRM.* The certification is found in the Appendix. We request written public comment on the certification. Comments must be filed in accordance with the same deadlines as comments filed in response to the *NPRM,* and must have a separate and distinct heading designating them as responses to the IRFC. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *NPRM,* including the IRFC, to the Chief Counsel for Advocacy of the Small Business Administration.

IV. Paperwork Reduction Analysis

27. This document contains proposed new and modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

28. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be publically available online via ECFS. These documents will also be available for public inspection during regular business hours in the FCC Reference Information Center, which is located in Room CY–A257 at FCC Headquarters, 445 12th Street SW., Washington, DC 20554. The Reference Information Center is open to the public Monday through Thursday from 8:00 a.m. to 4:30 p.m. and Friday from 8:00 a.m. to 11:30 a.m.

List of Subjects

47 CFR Part 4

Disruptions to communications, Reporting requirements.

47 CFR Part 9

Interconnected voice over internet protocol services, Definitions.

47 CFR Part 20

Commercial mobile services, Mobile services and Commercial mobile radio services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission propose to amend 47 CFR parts 4, 9, and 20 as follows:

PART 4—DISRUPTIONS TO COMMUNICATIONS

■ 1. The authority citation of part 4 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 154, 155, 201, 251, 307, 316, 615a–1, 1302(a), and 1302(b) unless otherwise noted.

■ 2. Section 4.3 is amended by revising paragraph (f) to read as follows:

* * * * *

(f) Wireless service providers include Commercial Mobile Radio Service communications providers that use cellular architecture and CMRS paging providers. See § 20.3 of this chapter for the definition of Commercial Mobile Radio Service. Also included are affiliated and non-affiliated entities that maintain or provide communications networks or services used by the provider in offering such communications.

* * * * *

PART 9—INTERCONNECTED VOICE OVER INTERNET PROTOCOL SERVICES

■ 3. The authority citation of part 9 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i)–(j), 251(e), 303(r), and 615a–1 unless otherwise noted.

■ 4. Section 9.3 is amended by revising the definition of "CMRS" to read as follows:

* * * * *

CMRS. Commercial Mobile Radio Services, as defined in § 20.3 of this chapter.

* * * * *

PART 20—COMMERCIAL MOBILE SERVICES

■ 5. The authority citation of part 20 continues to read as follows:

Authority: 47 U.S.C. 151, 152(a), 154(i), 157, 160, 201, 214, 222, 251(e), 301, 302, 303, 303(b), 303(r), 307, 307(a), 309, 309(j)(3), 316, 316(a), 332, 615, 615a, 615b, and 615c unless otherwise noted.

§§ 20.7 and 20.9 [Removed].

■ 6. Remove §§ 20.7 and 20.9.

[FR Doc. 2016–19564 Filed 8–17–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58, 14–259; Report No. 3050]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petitions for reconsideration and clarification.

SUMMARY: Petitions for Reconsideration and Clarification (Petitions) have been filed in the Commission's rulemaking proceeding by Joseph DuFresne, on behalf of Broad Valley Micro Fiber Networks, Inc.; Stephen L. Goodman, on behalf of ADTRAN, Inc.; Matthew Crocker, on behalf of Crocker Telecommunications, LLC; Tamara L. Preiss, on behalf of Verizon; Wayne Hawley, on behalf of Southern Tier Wireless, Inc.; Martha A. Duggan and Brett A. Kilbourne, on behalf of National Rural Electric Cooperative Association and Utilities Technology Council; and John P. Janka, on behalf of ViaSat, Inc.

DATES: Oppositions to the Petition must be filed on or before September 2, 2016. Replies to an opposition must be filed on or before September 12, 2016.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Heidi Lankau, Wireline Competition Bureau, (202) 418–7400, email: *Heidi.Lankau@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3050, released August 12, 2016. The full text of the Petitions is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554 or may be accessed online via the Commission's Electronic Comment Filing System at *http://apps.fcc.gov/ecfs/.* The Commission will not send a copy of the *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because the *Notice* does not have an impact on any rules of particular applicability.

Subject: Connect America Fund; ETC Annual Reports and Certifications; Rural Broadband Experiments, FCC 16–64, published at 81 FR 44413, July 7, 2016, in WC Docket Nos. 10–90, 14–58, and 14–259. The Notice is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 7.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–19743 Filed 8–17–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 14–58 and CC Docket No. 01–92; Report No. 3049]

Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration and clarification.

SUMMARY: A Petition for Reconsideration and Clarification (Petition) has been filed in the Commission's rulemaking proceeding by Paul Stark on behalf of Baraga Telephone Company.

DATES: Oppositions to the Petition must be filed on or before September 2, 2016. Replies to an opposition must be filed on or before September 12, 2016.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Suzanne Yelen, Wireline Competition Bureau, (202) 418–0626, email: *Suzanne.Yelen@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3049, released August 10, 2016. The full text of the Petition is available for viewing and copying at the FCC Reference Information Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554 or may be accessed online via the Commission's Electronic Comment Filing System at *http://apps.fcc.gov/ecfs/.* The Commission will not send a copy of this *Notice* pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because this *Notice* does not have an impact on any rules of particular applicability.

Subject: Connect America Fund; ETC Annual Reports and Certifications; Developing a Unified Intercarrier Compensation Regime, FCC 16–33, published at 81 FR 24282, April 25, 2016, in WC Docket Nos. 10–90 and 14–58; CC Docket No. 01–92. This Notice is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–19739 Filed 8–17–16; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 160615524–6524–01]

RIN 0648–BG13

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Scup Fishery; Framework Adjustment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes modifications to the Southern Scup Gear Restricted Area, as recommended by the Mid-Atlantic Fishery Management Council. The proposed changes would modify the southern and eastern boundaries of the Southern Scup Gear Restricted Area, which is in effect from January 1 through March 15 of each year. This rule is intended to increase access to traditional squid fishing areas, while maintaining protection for juvenile scup.

DATES: Comments must be received by September 19, 2016.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2016–0102, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal eRulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2016-0102;*
2. Click the "Comment Now!" icon and complete the required fields; and
3. Enter or attach your comments.

- *Mail:* Submit written comments to John K. Bullard, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Scup GRA Framework."

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by us. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Copies of the Scup Gear Restricted Area Modification Framework, including the draft Environmental Assessment, the Regulatory Impact Review, and the Regulatory Flexibility Act Analysis prepared by the Mid-Atlantic Fishery Management Council in support of this action are available from Dr. Christopher Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. The supporting documents are also accessible via the Internet at: *http://www.mafmc.org/actions/scup-gear-restricted-areas-framework* or *http://www.greateratlantic.fisheries.noaa.gov/sustainable/species/scup/index.html.*

FOR FURTHER INFORMATION CONTACT: Moira Kelly, Fishery Program Specialist, phone: 978–281–9218; email: *Moira.Kelly@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Scup (*Stenotomus chrysops*) is managed jointly by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission through the Summer Flounder, Scup, Black Sea Bass Fishery Management Plan (FMP). The management unit specified in the FMP for scup is U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. Currently, the scup stock is not overfished and it is not experiencing overfishing.

When scup was overfished prior to 2009, the Council and NMFS determined that juvenile scup mortality in small-mesh fisheries (*i.e.,* those fisheries using mesh smaller than the minimum size specified in the scup regulations) was highly problematic. Two seasonal Gear Restricted Areas (GRAs) were implemented to prohibit vessels fishing for squid, black sea bass, or silver hake (also known as whiting) from using mesh smaller than the 5.0-inch (12.7-cm) minimum scup mesh size in the areas during certain times of year. The GRAs were implemented in 2000 (May 24, 2000, 65 FR 33486) and modified several times (December 27, 2000, 65 FR 81761; March 1, 2001, 66 FR 12902; January 2, 2003, 68 FR 60; January 4, 2005, 70 FR 303) between 2000 and 2005. Details on the changes to the GRAs are described in those actions and are not repeated here. Most often the changes were enacted to accommodate access for one of the regulated small-mesh fisheries, while still maintaining an effective level of protection for juvenile scup. The GRAs in their current forms have been in effect since 2003 (Northern GRA) and 2005 (Southern GRA). Scup has been considered rebuilt since 2009, and is currently estimated to be approximately 210 percent of the biomass target, although it has begun to decline in recent years. Research by the Northeast Fisheries Science Center suggests that minimizing juvenile mortality in the GRAs likely contributed to the recovery and expansion of the scup population.

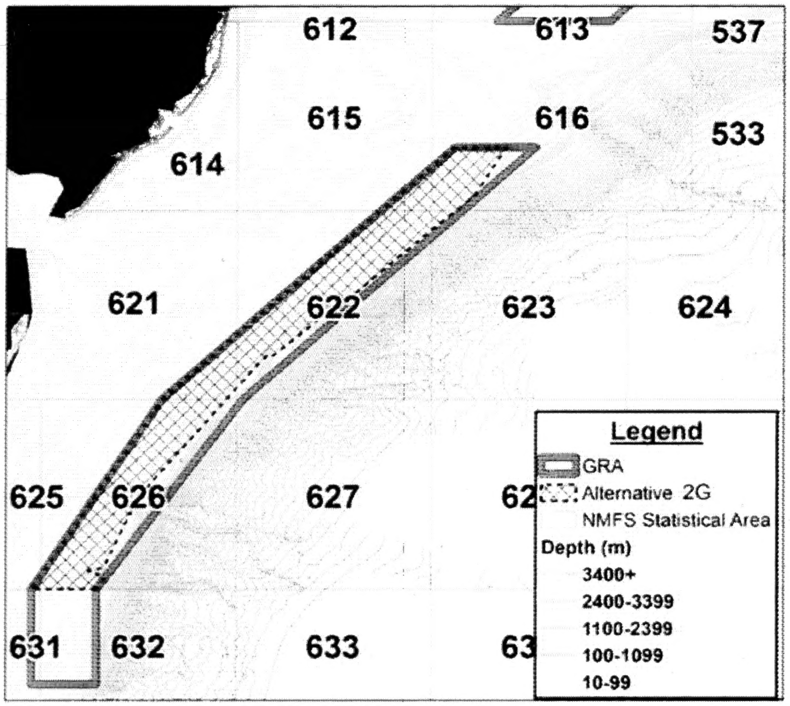
Like the prior modifications, the Council began considering modifying the GRAs in early 2014 in response to requests from the squid fishery to increase access to historic fishing grounds during the seasons in which the GRAs are in effect. Because of the spatial overlap of several of the alternatives in the Council's Deep-Sea Coral Amendment (*http://www.mafmc.org/actions/msb-am16*), the Council postponed development of the Scup GRA framework until action on the Coral Amendment had been completed. The Council took final action on the Deep-Sea Coral Amendment in June 2015, and the action is currently under review at NMFS.

The Council initially considered modifications to the boundaries and seasons of both GRAs, but ultimately determined that the only changes warranted at this time were to the southern and eastern boundaries of the Southern GRA. The Council considered several variations of the Southern GRA boundary and determined that the proposed measure best balanced the needs of the squid fishery and the protective value of the Southern GRA for juvenile scup from January 1–March 15.

Proposed Modifications

The proposed change to the Southern GRA would shift the eastern boundary west roughly following the outermost points of the proposed Deep-Sea Coral Protection Areas. The proposal would also remove the southern portions of the GRA that overlap statistical areas 631 and 632. The current (thick outline) and proposed (hatched) Southern GRA are shown in the figure below. The proposed Southern GRA coordinates are provided in the proposed regulatory text.

Figure 1. Current and Proposed Southern Gear Restricted Areas



The Council designed the recommended modifications to minimize overlap between the GRA and the recommended discrete deep-sea coral areas. The eastern boundary is intended to restore access to the squid fishery in areas approximately 55 to 60 fathoms (100 to 110 m) and deeper. The shift to the southern boundary north is based on analysis suggesting there are very few scup in statistical areas 631 and 632 from January through March. The Council's proposal would marginally reduce the amount of protection for the scup stock, in return for a modest increase in squid availability. The proposed Southern GRA is smaller than the current one; slightly reducing coverage of the scup estimated to the covered by the GRA. However, analysis shows that this change would result in a modest increase in access for the squid and whiting fisheries and a slight increase in the availability of black sea bass in the GRA from January 1–March 15. It is important to note, however, that the amount of each stock (by weight) currently estimated to be within the GRA during the winter is only a small fraction of the total stock abundance during that same timeframe. As a result, we do not expect the proposed boundary changes to compromise the scup stock or result in overfishing for squid, black sea bass, or whiting.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the Assistant Administrator has determined that this proposed rule is consistent with the Summer Flounder, Scup, and Black Sea Bass FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Council conducted an evaluation of the potential socioeconomic impacts of the proposed measures in conjunction with an Environmental Assessment. There were 64 federally permitted squid, whiting, and black sea bass vessels fishing with small-mesh from January 1–March 15 in the statistical areas covered by the GRA for the past three years. These are the vessels likely to be affected by this action. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. Of those 64 vessels, 61 are considered "small" by the NMFS size standards, and three are considered "large." The proposed measure would modify the boundaries of the Southern Scup GRA and is intended to increase access to the squid, whiting, and black sea bass fisheries. The boundary changes were designed to maintain a high level of discard mortality protection for the scup fishery, while increasing opportunity, and therefore revenue, for the small-mesh fishery targeting squid, whiting, and black sea bass. The changes are not expected to result in excessive increases in mortality for any species. As a result, economic impact of this action is expected to be slightly positive for all of the affected vessels in those fisheries.

Because this rule will not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and none has been prepared.

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: August 12, 2016.

Paul Doremus,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.124, revise paragraph (a)(1) to read as follows:

§ 648.124 Scup commercial season and commercial fishery area restrictions.

(a) *Southern Gear Restricted Area*—(1) *Restrictions.* From January 1 through March 15, all trawl vessels in the Southern Gear Restricted Area that fish for or possess non-exempt species as specified in paragraph (a)(2) of this section must fish with nets that have a minimum mesh size of 5.0-inch (12.7-cm) diamond mesh, applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net. For trawl nets with codends (including an extension) of fewer than 75 meshes, the entire trawl net must have a minimum mesh size of 5.0 inches (12.7 cm) throughout the net. The Southern Gear Restricted Area is an area bounded by straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

SOUTHERN GEAR RESTRICTED AREA

Point	N. lat.	W. long.
SGA1	39.333333	−72.616667
SGA2	39.073019	−72.786958
SGA3	38.496545	−73.467370
SGA4	38.477560	−73.489477
SGA5	38.495300	−73.510888
SGA6	38.438654	−73.557363
SGA7	38.219230	−73.829500
SGA8	38.229019	−73.845524
SGA9	38.199688	−73.877487
SGA10	37.492224	−74.499182
SGA11	37.490513	−74.504757
SGA12	37.476656	−74.510019
SGA13	37.116111	−74.680000
SGA14	37.097222	−74.759444
SGA15	37.073889	−74.683889
SGA16	37.057931	−74.672732
SGA17	37.000000	−74.716667
SGA18	37.000000	−75.050000
SGA19	38.000000	−74.383333
SGA20	39.333333	−72.883333
SGA1	39.333333	−72.616667

* * * * *

[FR Doc. 2016–19702 Filed 8–17–16; 8:45 am]

BILLING CODE 3510–22–P

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21). The committee is being convened to complete all substantive work on a report to USDA related to the promotion of coexistence efforts among farmers at the local level.

DATES: The meeting will be held on Thursday-Friday, September 8–9, 2016, 8:30 a.m. to 5:00 p.m. each day. This meeting is open to the public. On September 8, 2016, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration, starting at 3:30 p.m. Members of the public who wish to make oral statements should also inform Dr. Schechtman in writing or via Email at the indicated addresses below at least three business days before the meeting.

ADDRESSES: U.S. Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: General information about the committee can also be found at *http://www.usda.gov/wps/portal/usda/usdahome?navid=BIOTECH_AC21&navtype=RT&parentnav=BIOTECH.* However, Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue SW., Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; Email *AC21@ars.usda.gov* may be contacted for specific questions about the committee or this meeting.

SUPPLEMENTARY INFORMATION: The AC21 has been established to provide information and advice to the Secretary of Agriculture on the broad array of issues related to the expanding dimensions and importance of agricultural biotechnology. The committee is charged with examining the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA, and providing guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture. In recent years, the work of the AC21 has centered on the issue of coexistence among different types of agricultural production systems. The AC21 consists of members representing the biotechnology industry, the organic food industry, farming communities, the seed industry, food manufacturers, state government, consumer and community development groups, as well as academic researchers and a medical doctor. In addition, representatives from the Department of Commerce, the Department of Health and Human Services, the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative serve as ''ex officio'' members.

In its last report, issued on November 17, 2012, entitled ''Enhancing Coexistence: A Report to the Secretary of Agriculture,'' and available on the Web site listed below, the AC21 offered a diverse package of recommendations, among which was a recommendation that ''. . . USDA should facilitate development of joint coexistence plans by neighboring farmers,'' and that in a pilot program, USDA should, among other things, offer incentives for the development of such plans.

At its meeting on December 14–15, 2015, USDA offered a specific new charge to the AC21 building on its previous work. Recognizing that USDA currently lacks the legal authority to offer any such incentives, the committee has been charged with considering the following two questions: Is there an approach by which farmers could be encouraged to work with their neighbors to develop joint coexistence plans at the State or local level? If so, how might the Federal government assist in that process?

At the AC21's two most recent meetings, on March 14–15, 2016 and June 13–14, 2016, AC21 members reached a general agreement on the main elements of the upcoming report and made substantial progress in defining the content of its next report. The report is to include, among other things, a model for convening coexistence discussions at the local level as well as guidance for farmers around the production of identity-preserved crops. The objective for this meeting is to complete all substantive work on the report to USDA.

Background information regarding the work and membership of the AC21 is available on the USDA Web site at *http://www.usda.gov/wps/portal/usda/usdahome?contentid=AC21Main.xml&contentidonly=true.* A copy of the draft AC21 report under consideration will be made available on that Web site at least 10 days prior to the meeting.

Register for the Meeting: The public is asked to pre-register for the meeting at least 8 business days prior to the meeting. Your pre-registration must state: The names of each person in your group; organization or interest represented; the number of people planning to give oral comments, if any; and whether anyone in your group requires special accommodations. Submit registrations to Ms. Dianne Fowler at (202) 720–4074 or by Email at *Dianne.fowler@ars.usda.gov* by August 26, 2016. The Agricultural Research Service will also accept walk-in registrations. Members of the public who request to give oral comments to the Committee, must arrive by 8:45 a.m. on September 8, 2016 and will be given their allotted time limit and turn at the check-in table.

Public Comments: Written public comments may be mailed to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue SW., Washington, DC 20250; via fax to (202) 690–4265 or email to *AC21@ars.usda.gov.* All written comments must arrive by September 1, 2016. Oral comments are also accepted. To request to give oral comments, see instructions under 'Register for the Meeting' above.

Availability of Materials for the Meeting: All written public comments will be compiled into a binder and available for review at the meeting. Duplicate comments from multiple individuals will appear as one comment, with a notation that multiple copies of the comment were received. Please visit the Web site listed above to learn more about the agenda for or reports resulting from this meeting.

Meeting Accommodations: The meeting will be open to the public, but space is limited. USDA is committed to ensuring that all employees are included in our work environment, programs and events. If you are a person with a disability and request reasonable accommodations to participate in this meeting, please note the request in your registration. All reasonable accommodation requests are managed on a case by case basis.

Issued at Washington, DC, August 11, 2016.

Catherine E. Woteki,

Under Secretary, Research, Education and Economics.

[FR Doc. 2016–19720 Filed 8–17–16; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0056]

Secretary's Advisory Committee on Animal Health; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This is a notice to inform the public of an upcoming meeting of the Secretary's Advisory Committee on Animal Health. The meeting is being organized by the Animal and Plant Health Inspection Service to discuss matters of animal health.

DATES: The meeting will be held on September 7 and 8, 2016, from 9 a.m. to 5 p.m. each day.

ADDRESSES: The meeting will be held in the Williamsburg, Room 104–A of the USDA Headquarters, 1400 Independence Avenue SW., Washington DC 20050.

FOR FURTHER INFORMATION CONTACT: Dr. Diane Sutton, Designated Federal Officer, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; phone (301) 851–3509, email *SACAH.Management@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Animal Health (the Committee) advises the Secretary of Agriculture on matters of animal health, including means to prevent, conduct surveillance on, monitor, control, or eradicate animal diseases of national importance. In doing so, the Committee will consider public health, conservation of natural resources, and the stability of livestock economies.

Tentative topics for discussion at the meeting include:

- Human infections with Salmonella associated with contact with live poultry;
- Emerging diseases implementation guide;
- Emerging disease response;
- Comprehensive integrated animal health surveillance;
- VS stakeholder engagement;
- Foot and mouth disease vaccine availability;
- National bio and agro-defense facility update and request for input on process for identifying stakeholder priorities;
- How to maximize effectiveness of the committee; and
- Potential agenda items for the 2016–2018 committee term.

A final agenda will be posted on the Committee Web site.

Those wishing to attend the meeting in person must complete a brief registration form by clicking on the "SACAH Meeting Sign-Up" button on the Committee's Web site (*http://www.aphis.usda.gov/animalhealth/sacah*). Members of the public may also join the meeting via teleconference in "listen-only" mode. Participants who wish to listen in on the teleconference may do so by dialing 888–945–5893 and then entering the public passcode 5309315#. Oral comments from the public will be accepted at approximately 1:15 p.m. each day.

Questions and written statements for the Committee's consideration may be submitted up to 5 working days before the meeting. They may be sent to *SACAH.Management@aphis.usda.gov* or mailed to the person listed under **FOR FURTHER INFORMATION CONTACT**. The statement must also reference Docket Number APHIS–2016–0056.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 2).

Done in Washington, DC, this 12th day of August 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–19737 Filed 8–17–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2016–0058]

Notice of Request for a Revision to and Extension of Approval of an Information Collection; Tuberculosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the tuberculosis regulations.

DATES: We will consider all comments that we receive on or before October 17, 2016.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0058.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2016–0058, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2016-0058* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the domestic tuberculosis program, contact Dr. C. William Hench, Cattle Health Center Staff Veterinarian, Surveillance, Preparedness and Response Services, Veterinary Services, APHIS, 2150 Centre Avenue, Fort Collins, CO 80526–8117; (970) 494–7378. For copies of more detailed information on the information collection, contact Ms. Kimberly Hardy, APHIS' Information Collection Coordinator, at (301) 851–2727.

SUPPLEMENTARY INFORMATION:

Title: Tuberculosis.

OMB Control Number: 0579–0146.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to prohibit or restrict the interstate movement of animals and animal products to prevent the dissemination within the United States of animal diseases and pests and for conducting programs to detect, control, and eradicate pests and diseases of livestock. In connection with this mission, APHIS participates in a cooperative State/Federal tuberculosis eradication program, which is a national program to eliminate tuberculosis from the United States. This program is conducted under various States' authorities supplemented by Federal authorities regulating the interstate movement of affected animals.

The tuberculosis regulations contained in 9 CFR part 77 provide several levels of tuberculosis risk classifications to be applied to States and zones within States, and classify States and zones according to their tuberculosis risk. The regulations restrict the interstate movement of cattle, bison, and captive cervids from the various classes of States or zones to prevent the spread of tuberculosis.

These regulations include, but are not limited to, information collection activities, such as memoranda of understanding; agreements; reports; testing records and status reports; plans, permits, and certificates; specimen submissions; risk surveys; proceeds from animals, animal products, and materials sold for salvage; appraisal and indemnity claims; labeling; and recordkeeping.

The information collection requirements above are currently approved by the Office of Management and Budget (OMB) under OMB Control Number 0579–0146, Tuberculosis, and OMB Control Number 0579–0412, Approved Tests for Bovine Tuberculosis in Cervids. After OMB approves this combined information collection package (0579–0146), APHIS will retire OMB Control Number 0579–0412.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.33 hours per response.

Respondents: State animal health officials, producers and owners (including feedlot owners), accredited veterinarians, laboratory personnel, and professional appraisers.

Estimated annual number of respondents: 4,574.

Estimated annual number of responses per respondent: 20.

Estimated annual number of responses: 90,453.

Estimated total annual burden on respondents: 29,514 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 12th day of August 2016.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2016–19733 Filed 8–17–16; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Fee Site; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Tongass National Forest, USDA Forest Service

ACTION: Notice of new fee site.

SUMMARY: The Tongass National Forest is proposing to charge a $75 fee for the overnight rental of the Deep Bay Cabin. This facility is available for recreation use through the National Recreation Reservation Service, at *www.recreation.gov.* The Forest has decided to offer the cabin, through *www.recreation.gov* prior to charging a rental fee. Public feedback based on cabin rentals in the Alaska Region have consistently demonstrated that people appreciate and enjoy the availability of rental cabins. Funds from the rental will be used for the continued operation and maintenance of the facilities. The cabin rental fee is only proposed and will be determined upon further analysis and public comment.

DATES: Public comment on the proposal for Deep Bay Cabin to begin charging a rental fee will be received through December 2016. Starting in January 2017 comments will be compiled, analyzed and shared with the Alaska Region Fee Board. Should the fee proposal move forward, the rental rate of $75 per night will likely begin in February 2017.

ADDRESSES: Forest Supervisor, Tongass National Forest, 648 Mission Street, Ketchikan, AK 99901.

FOR FURTHER INFORMATION CONTACT: Lisa Fluharty, Recreation Fee Coordinator, (907) 228–6331.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VII, P.L. 108–447) directed the Secretary of Agriculture to publish a six month advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by the Alaska Region Fee Board prior to a final decision and implementation.

The Tongass National Forest provides multiple cabins located in a variety of forest environments ranging from ocean shore, lakeshore, to mountain and alpine settings. These cabins serve as a base camp for forest visitors for hiking, hunting, fishing, OHV riding and nature touring activities. These cabins are important for access and maintaining traditional recreation activities, including subsistence hunting and fishing.

The Deep Bay Cabin is fully accessible and includes a wheelchair ramp from the parking lot to the cabin. It is a large group cabin and can accommodate up to 12 people. It consists of two buildings connected by a large deck which is partially covered. Each building has sleeping rooms and a common room. There are oil stoves for heat (not cooking). There is a small storage shed, an outside fire grill, and outhouse. It is a simple facility, with no electricity, trash service or running water. The cabin is located near Deep Bay on Zarembo Island. It is accessible year-around by float plane or boat.

A cabin rental analysis performed in 2015 for the cabins in the Alaska Region has shown that people desire having this type of recreation experience on the Tongass National Forest. The proposed $75 per night cabin rental fee for Deep Bay Cabin is consistent with the fee charged at the only other large group cabin on the Tongass National Forest and is both reasonable and acceptable for this sort of unique recreation experience. People interested in renting the facility will need to go through the National Recreation Reservation Service, at *www.recreation.gov* or by calling 1–877–444–6777. The National Recreation Reservation Service charges a $9 fee for online reservations and a $10 fee for phone in reservations.

Dated: August 11, 2016.

M. Earl Stewart,

Forest Supervisor, Tongass National Forest.

[FR Doc. 2016–19714 Filed 8–17–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

White River National Forest; Eagle County, CO; Berlaimont Estates Access Route EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Berlaimont Estates LLC (Berlaimont) owns a 680-acre private inholding (subject property) within the White River National Forest to the north of Interstate 70 in the vicinity of Edwards, Colorado. Berlaimont intends on the developing the property as 19 individual residential lots, with each at least 35 acres in size. Currently, the subject property may be accessed by National Forest System Roads (NFSR) 774 and 780, which connects to the southeastern corner of this horseshoe-shaped subject property. Berlaimont has applied for an easement to construct, improve, utilize, and maintain an access road for reliable, year-round vehicular access to reach the developable areas (northern portion) of the subject property. Specifically, Berlaimont is proposing to improve segments of the existing NFSR 774 (1.04 miles) and NFSR 780 (3.09 miles), as well as construct a new road segment (1.16 miles) across additional National Forest System (NFS) lands in order to access the northern portion of the subject property. Improvements would consist of constructing a 20′-wide asphalt road with a 3′ gravel shoulder, vehicle turnouts, retaining walls, traffic signs, guardrails, erosion control facilities, and drainage facilities.

DATES: Comments concerning the scope of the analysis must be received by October 3, 2016. The draft environmental impact statement is expected to be available for public review in the March of 2017 and the final environmental impact statement is expected in the June of 2017.

ADDRESSES: Send written comments to Scott Fitzwilliams, Forest Supervisor, c/o Matt Klein, Realty Specialist, White River National Forest, P.O. Box 190, Minturn, CO 81645. Comments may also be sent via email to *matthewklein@fs.fed.us* (include "Berlaimont Estate Access Route EIS" in the subject line), electronically at *https://cara.ecosystem-management.org/Public//CommentInput?Project=50041,* or via facsimile to (970) 827–9343.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Holy Cross Ranger Station, 24747 U.S. Highway 24, Minturn, CO 81645. Visitors are encouraged to call ahead to (970) 827–5715 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Additional information related to the project can be obtained from the project Web page: *http://www.fs.fed.us/nepa/nepa_project_exp.php?project=50041* or by contacting Matt Klein, Realty Specialist, Eagle/Holy Cross Ranger District, 24747 US Hwy 24, P.O. Box 190, Minturn, Colorado 81645. Mr. Klein can be reached by phone at (970) 827–5182 or by email at *matthewklein@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Estimated Dates

The draft Environmental Impact Statement is expected March of 2017, and the final Environmental Impact Statement is expected June of 2017.

Purpose and Need for Action

The purpose of the proposed project is to provide reliable, year-round vehicular access to the developable portions of Berlaimont's private inholding property.

The need for the proposed project is that the existing NSFRs may not provide adequate access to secure reasonable use and enjoyment of the Berlaimont's property, to which they assert they are entitled under the Alaska National Interest Lands Conservation Act (ANILCA).

Proposed Action

The Proposed Action is to grant an easement to Berlaimont to improve (pave), utilize, and maintain segments of the existing NFSR 774 (1.04 miles) and NFSR 780 (3.09 miles), which grants access to the southeastern corner of the property only.

Possible Alternatives

An alternative will also be analyzed that includes the proposed action with the addition of constructing, utilizing, and maintaining a new road segment (1.16 miles) across NFS lands in order to access the northern portion of the subject property.

Responsible Official

The Responsible Official is Mr. Scott Fitzwilliams, Forest Supervisor, c/o Matt Klein, Realty Specialist, White River National Forest, P.O. Box 190, Minturn, CO 81645.

Nature of Decision To Be Made

Based on the analysis that will be documented in the forthcoming EIS, the Responsible Official will decide whether or not to implement, in whole or in part, the Proposed Action or another alternative that may be developed by the Forest Service as a result of scoping.

Scoping Process

This Notice of Intent initiates the scoping process, which guides the development of the Environmental Impact Statement (EIS). The Forest Service is soliciting comments from Federal, State and local agencies and other individuals or organizations that may be interested in or affected by implementation of the proposed project. Public questions and comments regarding this proposal are an integral part of this environmental analysis process. Input provided by interested and/or affected individuals, organizations and governmental agencies will be used to identify alternative actions and resource issues that will be analyzed in the EIS. The Forest Service will identify significant issues raised during the scoping process, and use them to formulate alternatives, prescribe mitigation measures and project design features, or analyze environmental effects.

A public open house meeting will be held on Wednesday, September 7th, 2016 from 6:00 p.m. to 9:00 p.m. at the Edwards facility for Eagle County EMS/

Paramedics (1055 Edwards Village Blvd., Edwards, CO 81632). The meeting will be held in the classroom. It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however.

There will be an additional opportunity to comment when the Notice of Availability of the Draft EIS is published in the **Federal Register**. For objection eligibility, each individual or representative from each entity submitting written comments must either sign the comment or verify identity upon request. Individuals and organizations wishing to be eligible to object must meet the information requirements in 36 CFR 218.25(a)(3).

Preliminary Issues

Section 1323(a) of the ANILCA statute (incorporated into 36 CFR Subpart D) compels the agency to authorize access to non-Federal land within the boundaries of NFS lands [*i.e.* inholdings], to the extent that such access is adequate for providing reasonable use and enjoyment of that inholding consistent with other, similiarly situated non-Federal lands.

In addition to providing reasonable use and enjoyment, 36 CFR Subpart D requires that any authorized access route be located and constructed so as to minimize damage or disturbance to NFS lands and resources.

Consequently, a key issue for this project is to determine what route location(s) and level of construction are necessary in order to achieve "adequate access" for "reasonable use and enjoyment" of the applicant's inholding property.

Permits or Licenses Required

This Proposed Action considers the issuance of a road easement from the Forest Service to Berlaimont under the authority of the Federal Land Policy and Management Act of 1976 (FLPMA).

Comment Requested

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's positions and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft Environmental Impact Statement stage but that are not raised until after completion the final Environmental Impact Statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 12, 2016.

Scott G. Fitzwilliams,

Forest Supervisor.

[FR Doc. 2016–19700 Filed 8–17–16; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee: Meeting of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Friday, September 2, 2016, from 10:00 a.m. to 11:00 a.m. Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held via conference call.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Chesebro, Office of Energy & Environmental Industries, International Trade Administration, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1297; Fax: 202–482–5665; email: *jonathan.chesebro@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the Friday, September 2, 2016 CINTAC meeting is as follows: DOC's Civil Nuclear Trade Initiative Update.

Public attendance is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. Jonathan Chesebro at the contact information above by 5:00 p.m. EDT on Friday, August 26, 2016 in order to pre-register. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may not be possible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Chesebro and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5:00 p.m. EDT on Friday, August 26, 2016. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EDT on Friday, August 26, 2016. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Man Cho,
Director, Acting, Office of Energy and Environmental Industries.

[FR Doc. 2016–19692 Filed 8–17–16; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE781

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of four Letters of Authorization.

SUMMARY: In accordance with regulations issued under the Marine Mammal Protection Act, as amended, we hereby give notification that we, the National Marine Fisheries Service (NMFS), have issued four one-year Letters of Authorization (Authorizations) to the U.S. Navy (Navy) to take marine mammals by harassment incidental to their military readiness activities associated with the routine training, testing, and military operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar within the western and central North Pacific Ocean and Indian Ocean.

DATES: These Authorizations are effective from August 15, 2016, through August 14, 2017.

ADDRESSES: Electronic copies of the Navy's April 5, 2016 application letter and the Authorizations are available by writing to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed here (See **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm#surtass*. The public may view the documents cited in this notice, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Dale Youngkin, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens if certain findings are made and regulations are issued. Under the MMPA, the term "take" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals. We, NMFS, have been delegated the authority to issue such regulations and Authorizations.

With respect to military readiness activities, the MMPA defines harassment as "(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment]."

Authorization may be granted for periods of five years or less if we find that the total taking will have a negligible impact on the affected species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for certain subsistence uses. In addition, we must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for subsistence uses. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the Navy's routine training, testing, and military operations of SURTASS LFA sonar are in effect through August 15, 2017 (77 FR 50290, August 20, 2012) and are codified at 50 CFR part 218, subpart X. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system. For detailed information on this action, please refer to the August 20, 2012, **Federal Register** Notice and 50 CFR part 218, subpart X. Under those regulations, we must publish a notice of issuance of an Authorization or Authorization renewal in the **Federal Register** within 30 days of a determination.

Summary of Request

On April 5, 2016 we received an application from the Navy requesting a renewal of four Authorizations, originally issued on August 15, 2012 (77 FR 51969, August 28, 2012) for the taking of marine mammals incidental to routine training, testing, and military operations of SURTASS LFA sonar in the western and central North Pacific Ocean and Indian Ocean under the regulations issued on August 15, 2012 (77 FR 50290, August 20, 2012): one for the United States Naval Ship (USNS) VICTORIOUS (T–AGOS 19), one for the USNS ABLE (T–AGOS 20), one for the USNS EFFECTIVE (T–AGOS 21), and one for the USNS IMPECCABLE (T–AGOS 23). NMFS considered the Navy's application as adequate and complete on May 2, 2016.

NMFS has renewed the first cohort of 2012 Authorizations on an annual basis in 2013 (78 FR 57368, September 18, 2013); 2014 (79 FR 49501, August 21, 2014); and again in 2015 (80 FR 48296). The Navy's 2016 application for renewal requests that these four Authorizations become effective on August 15, 2016, for a period not to exceed one year.

Summary of Activity Under the 2015 Authorizations

The Navy submitted quarterly mission reports for the periods of August 2015 through May 2016 within the required timeframes. These quarterly reports include the dates and times of the military readiness activities; location of each SURTASS LFA sonar vessel; mission operational area; marine mammal observations; and records of any delays or suspensions of sonar operations. The Navy must also report on the number of marine mammals detected by visual, passive, and active acoustic monitoring and the estimated percentage of each marine mammal stock taken by Level A and Level B harassment. The reports indicate the following:

- The Navy conducted a total of eight missions from August 15, 2015, through May 14, 2016, in the northwestern Pacific Ocean, which totaled 20.56 mission days and resulted in 37.1 hours of LFA sonar transmissions (2.9% of the permitted sonar transmission time).
- The total percentage of each marine mammal stock taken by Level B harassment has not exceeded the 12 percent cap. For each stock, the percentage of take was well below the levels authorized in the 2015 Authorizations.
- The total percentage of each marine mammal stock taken by Level A harassment has not exceeded the levels authorized in the 2015 Authorizations. In fact, the Navy reported no incidences of Level A harassment takes.

The operational tempo, number of active transmission hours, marine mammal detections, behavioral observations, and level of anticipated take of marine mammals fall within the scope and nature of those contemplated by the final rule and authorized in the 2015 Authorizations.

Monitoring Reports

The Navy has submitted the monitoring reports on time as required under 50 CFR 218.236 and the 2015 Authorizations. We have reviewed these reports and determined them to be acceptable. Based on these reports, the Navy has not exceeded the average annual estimated usage of the four SURTASS LFA sonar systems and remains well within the take authorized. In accordance with the current SURTASS LFA sonar regulations (50 CFR 218.230), the Navy must submit an annual report to us no later than 45 days after the 2015 Authorizations have expired. Upon receipt, we will post the annual report at: *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm#surtass.*

Level of Taking for 2016 Authorizations Period

For the 2016 to 2017 Authorization period, the Navy expects to conduct the same type and amount of routine training, testing, and military operations of SURTASS LFA sonar in the western and central North Pacific and Indian Oceans as they have in the northwest Pacific Ocean and the north-central Pacific Ocean requested under the 2012, 2013, 2014, and 2015 Authorizations. Similarly, the Navy expects to remain within the annual take estimates analyzed in the final rule. We determined that the level of taking by incidental harassment from the activities described in the Authorizations and supporting application is consistent with the findings made for the total taking allowable under the 2012 final rule.

Compliance With Mitigation, Monitoring, and Reporting Measures

Based on our review of the Navy's quarterly mission reports, the Navy complied with the required visual, passive, and acoustic monitoring measures in the final rule and previous Authorizations. The Navy also followed the required shutdown and other protocols for mitigating impacts to marine mammals while conducting operations.

The Navy is also complying with required measures under 50 CFR 218.236(d) to gain and share information on the species. The Navy reports that they are continuing to work on information transfer, declassification and archiving of ambient noise data from the Navy's Integrated Undersea Surveillance System to the public.

Based on the foregoing information and the Navy's application, we determined that the mitigation, monitoring, and reporting measures required under 50 CFR 218.234, .235, and .236 and NMFS' 2013–2014; 2014–2015; and 2015–2016 Authorizations were undertaken and will be undertaken during the period of validity of the renewed 2016–2017 Authorizations.

Adaptive Management

The final rule and the previous Authorizations include an adaptive management framework that allows us to consider new information and to determine (with input from the Navy regarding practicability) if modifications to mitigation and/or monitoring measures are appropriate and practicable. This framework includes a requirement for an annual meeting between NMFS and the Navy, if either agency deems it necessary.

Section 218.241 of the final rule describes examples of the types of information that could contribute to the decision to modify the mitigation or monitoring measures, including: (a) Results from the Navy's monitoring from the previous year's operation of SURTASS LFA sonar; (b) compiled results of Navy-funded research and development studies; (c) results from specific stranding investigations; (d) results from general marine mammal and sound research funded by the Navy or other sponsors; and (e) any information that reveals marine mammals may have been taken in a manner, extent or number not anticipated by these regulations or subsequent Authorizations. None of the information reviewed by NMFS or the Navy resulted in any modifications to the existing mitigation or monitoring measures at this time with the exception of consideration of new information regarding potential OBIAs.

Consideration of Areas as Potential OBIAs

On April 7, 2016, we and the Navy convened a meeting to review and discuss consideration of possible additional Offshore Biologically Important Areas (OBIAs) and modification of existing OBIA boundaries. International and U.S. waters were evaluated to consider newly available peer-reviewed scientific data, information, or survey data on marine areas that may be eligible for consideration as OBIAs. This evaluation also included review of information from the following sources:

- Cetacean and Sound Mapping Working Group Biologically Important Areas (CetMap BIAs);
- Marine Mammal Protected Area Task Force (MMPATF)-identified Important Marine Mammal Areas (IMMAs);
- World Database on Protected Areas (joint program of the International Union for Conservation of Nature [IUCN] and the United Nations Environment Programme [UNEP]);
- 2014 United Nations List of Protected Areas;
- Convention on Biological Diversity;
- Marine Protected Areas Global (Wood, 2007);
- Marine Conservation Institute MPAtlas; and
- Cetaceanhabitat.org.

Several areas were identified for consideration. Three of the proposed new OBIAs are in areas authorized under the 2016–2017 Authorizations. However, the Navy agrees to treat these areas as OBIAs and will not transmit SURTASS LFA sonar at received levels above 180 dB SPL (rms) within 0.54 nmi (1 km) of the boundary of these potential OBIAs during the periods of biologically important activities for the purpose of the 2016–2017 Authorizations pending a final decision on their designation. NMFS and Navy will be including a description of the evaluation of these new areas in the Draft Supplemental Environmental Impact Statement and rulemaking process for the new (2017) SURTASS LFA sonar operations.

Litigation on Final Rule

On July 15, 2016, the U.S. Court of Appeals for the Ninth Circuit issued a decision in *NRDC, et al.* v. *Pritzker, et al.,* which challenged NMFS' 2012 final rule for SURTASS LFA sonar. The Ninth Circuit had not, however, issued a mandate in that case at the time the LOAs were issued.

Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing

On August 4, 2016, NMFS released its Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Guidance). This new guidance established new thresholds for predicting auditory injury, which equates to Level A harassment under the MMPA. In the **Federal Register** Notice (81 FR 51694), NMFS explained the approach it would take during a transition period, wherein we balance the need to consider this new best available science with the fact that some applicants have already committed time and resources to the development of analyses based on our previous guidance and have constraints that preclude the recalculation of take estimates, as well as where the action is in the agency's decision-making pipeline. In that Notice, we included a non-exhaustive list of factors that would inform the most appropriate approach for considering the new Guidance, including: The scope of effects; how far in the process the applicant has progressed; when the authorization is needed; the cost and complexity of the analysis; and the degree to which the guidance is expected to affect our analysis. In this case, the Navy's SURTASS LFA sonar rule was issued in 2012, this is the last remaining year of activity that will be authorized under this rule, and they need the authorization by August 12th in order to ensure continuity of operations. The SURTASS LFA sonar rule considers the potential for small numbers of cetaceans incurring auditory injury in the effects analysis and, as noted in the Final Rule, the Navy is authorized to take small numbers of cetaceans by Level A harassment as a precautionary measure even though quantitative analyses showed no Level A takes. The Navy has a robust and practicable monitoring and mitigation program that we believe is very effective in reducing the likelihood of injury. Additionally, we believe that a fair number of marine mammals will intentionally avoid approaching within distances of this slow-moving source that would result in injury. In summary, we have considered the new Guidance and believe that the likelihood of injury is adequately addressed in the analysis in the rule and appropriate protective measures are in place in the LOA.

Authorization

We have issued four Authorizations to the Navy, authorizing the incidental harassment of marine mammals, incidental to operating the four SURTASS LFA sonar systems for routine training, testing and use during military operations. Issuance of these four Authorizations is based on findings, described in the preamble to the final rule (77 FR 50290, August 20, 2012) and supported by information contained in the Navy's required reports on SURTASS LFA sonar and their application, that the activities described under these four Authorizations will have a negligible impact on marine mammal species or stocks and will not have an unmitigable adverse impact on their availability for taking for subsistence uses.

These Authorizations remain valid through August 14, 2017, provided the Navy remains in conformance with the conditions of the regulations and the LOAs, and the mitigation, monitoring, and reporting requirements described in 50 CFR 218.230 through 218.241 (77 FR 50290, August 20, 2012) and in the Authorizations are undertaken.

Dated: August 12, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–19711 Filed 8–17–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE781

Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of four Letters of Authorization.

SUMMARY: In accordance with regulations issued under the Marine Mammal Protection Act, as amended, we hereby give notification that we, the National Marine Fisheries Service (NMFS), have issued four one-year Letters of Authorization (Authorizations) to the U.S. Navy (Navy) to take marine mammals by harassment incidental to their military readiness activities associated with the routine training, testing, and military operations of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar within the western and central North Pacific Ocean and Indian Ocean.

DATES: These Authorizations are effective from August 15, 2016, through August 14, 2017.

ADDRESSES: Electronic copies of the Navy's April 5, 2016 application letter and the Authorizations are available by writing to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, by telephoning the contact listed here (See **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm#surtass.* The public may view the documents cited in this notice, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Dale Youngkin, Office of Protected Resources, NMFS (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens if certain findings are made and regulations are issued. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill marine mammals. We, NMFS, have been delegated the authority to issue such regulations and Authorizations.

With respect to military readiness activities, the MMPA defines harassment as ''(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B harassment].''

Authorization may be granted for periods of five years or less if we find that the total taking will have a negligible impact on the affected species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for certain subsistence uses. In addition, we must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for subsistence uses. The regulations also must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the Navy's routine training, testing, and military operations of SURTASS LFA sonar are in effect through August 15, 2017 (77 FR 50290, August 20, 2012) and are codified at 50 CFR part 218, subpart X. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system. For detailed information on this action, please refer to the August 20, 2012, **Federal Register** Notice and 50 CFR part 218, subpart X. Under those regulations, we must publish a notice of issuance of an Authorization or Authorization renewal in the **Federal Register** within 30 days of a determination.

Summary of Request

On April 5, 2016 we received an application from the Navy requesting a renewal of four Authorizations, originally issued on August 15, 2012 (77 FR 51969, August 28, 2012) for the taking of marine mammals incidental to routine training, testing, and military operations of SURTASS LFA sonar in the western and central North Pacific Ocean and Indian Ocean under the regulations issued on August 15, 2012 (77 FR 50290, August 20, 2012): One for the United States Naval Ship (USNS) VICTORIOUS (T–AGOS 19), one for the USNS ABLE (T–AGOS 20), one for the USNS EFFECTIVE (T–AGOS 21), and one for the USNS IMPECCABLE (T–AGOS 23). NMFS considered the Navy's application as adequate and complete on May 2, 2016.

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The operational tempo, number of active transmission hours, marine mammal detections, behavioral observations, and level of anticipated take of marine mammals fall within the scope and nature of those contemplated by the final rule and authorized in the 2015 Authorizations.

Monitoring Reports

The Navy has submitted the monitoring reports on time as required under 50 CFR 218.236 and the 2015 Authorizations. We have reviewed these reports and determined them to be acceptable. Based on these reports, the Navy has not exceeded the average annual estimated usage of the four SURTASS LFA sonar systems and remains well within the take authorized. In accordance with the current SURTASS LFA sonar regulations (50 CFR 218.230), the Navy must submit an annual report to us no later than 45 days after the 2015 Authorizations have expired. Upon receipt, we will post the annual report at: *http://www.nmfs.noaa.gov/pr/permits/incidental/military.htm#surtass.*

Level of Taking for 2016 Authorizations Period

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Compliance With Mitigation, Monitoring, and Reporting Measures

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The Navy is also complying with required measures under 50 CFR 218.236(d) to gain and share information on the species. The Navy reports that they are continuing to work on information transfer, declassification and archiving of ambient noise data from the Navy's Integrated Undersea Surveillance System to the public.

Based on the foregoing information and the Navy's application, we determined that the mitigation, monitoring, and reporting measures required under 50 CFR 218.234, .235, and .236 and NMFS' 2013–2014; 2014–2015; and 2015–2016 Authorizations were undertaken and will be undertaken during the period of validity of the renewed 2016–2017 Authorizations.

Adaptive Management

The final rule and the previous Authorizations include an adaptive management framework that allows us to consider new information and to determine (with input from the Navy regarding practicability) if modifications to mitigation and/or monitoring measures are appropriate and practicable. This framework includes a requirement for an annual meeting between NMFS and the Navy, if either agency deems it necessary.

Section 218.241 of the final rule describes examples of the types of information that could contribute to the decision to modify the mitigation or monitoring measures, including: (a) Results from the Navy's monitoring from the previous year's operation of SURTASS LFA sonar; (b) compiled results of Navy-funded research and development studies; (c) results from specific stranding investigations; (d) results from general marine mammal and sound research funded by the Navy or other sponsors; and (e) any information that reveals marine mammals may have been taken in a manner, extent or number not anticipated by these regulations or subsequent Authorizations. None of the information reviewed by NMFS or the Navy resulted in any modifications to the existing mitigation or monitoring measures at this time with the exception of consideration of new information regarding potential OBIAs.

Consideration of Areas as Potential OBIAs

On April 7, 2016, we and the Navy convened a meeting to review and discuss consideration of possible additional Offshore Biologically Important Areas (OBIAs) and modification of existing OBIA boundaries. International and U.S. waters were evaluated to consider newly available peer-reviewed scientific data, information, or survey data on marine areas that may be eligible for consideration as OBIAs. This evaluation also included review of information from the following sources:

- Cetacean and Sound Mapping Working Group Biologically Important Areas (CetMap BIAs);
- Marine Mammal Protected Area Task Force (MMPATF)—identified Important Marine Mammal Areas (IMMAs);
- World Database on Protected Areas (joint program of the International Union for Conservation of Nature [IUCN] and the United Nations Environment Programme [UNEP]);
- 2014 United Nations List of Protected Areas;
- Convention on Biological Diversity;
- Marine Protected Areas Global (Wood, 2007);
- Marine Conservation Institute MPAtlas; and
- *Cetaceanhabitat.org*

Several areas were identified for consideration. Three of the proposed new OBIAs are in areas authorized under the 2016–2017 Authorizations. However, the Navy agrees to treat these areas as OBIAs and will not transmit SURTASS LFA sonar at received levels above 180 dB SPL (rms) within 0.54 nmi (1 km) of the boundary of these potential OBIAs during the periods of biologically important activities for the purpose of the 2016–2017 Authorizations pending a final decision on their designation. NMFS and Navy will be including a description of the evaluation of these new areas in the Draft Supplemental Environmental Impact Statement and rulemaking process for the new (2017) SURTASS LFA sonar operations.

Litigation on Final Rule

On July 15, 2016, the U.S. Court of Appeals for the Ninth Circuit issued a decision in *NRDC, et al.* v. *Pritzker, et al.,* which challenged NMFS' 2012 final rule for SURTASS LFA sonar. The Ninth Circuit had not, however, issued a mandate in that case at the time the LOAs were issued.

Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing

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Authorization

We have issued four Authorizations to the Navy, authorizing the incidental harassment of marine mammals, incidental to operating the four SURTASS LFA sonar systems for routine training, testing and use during military operations. Issuance of these four Authorizations is based on findings, described in the preamble to the final rule (77 FR 50290, August 20, 2012) and supported by information contained in the Navy's required reports on SURTASS LFA sonar and their application, that the activities described under these four Authorizations will have a negligible impact on marine mammal species or stocks and will not have an unmitigable adverse impact on their availability for taking for subsistence uses.

These Authorizations remain valid through August 14, 2017, provided the Navy remains in conformance with the conditions of the regulations and the LOAs, and the mitigation, monitoring, and reporting requirements described in 50 CFR 218.230 through 218.241 (77 FR 50290, August 20, 2012) and in the Authorizations are undertaken.

Dated: August 12, 2016.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2016–19673 Filed 8–17–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Basic Requirements for Special Exemption Permits and Authorizations to Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive Marine Mammal Inventory Under the Marine Mammal Protection, the Fur Seal, and the Endangered Species Acts.

OMB Control Number: 0648–0084.

Form Number(s): None.

Type of Request: Regular (revision and extension of a currently approved information collection).

Number of Respondents: 536.

Average Hours per Response: Scientific research permit applications, 50 hours; public display permit applications, 30 hours; photography permit applications, 10 hours; General Authorization applications, 10 hours; major permit modification requests, 35 hours; minor permit modification requests, 3 hours; scientific research permit reports, 12 hours; public display permit reports, 2 hours; photography permit reports, 2 hours; General Authorization reports, 8 hours; public display inventory reporting, 2 hours; and record keeping, 2 hours per permit or authorization type (including permits for scientific research, public display, photography, General Authorization; and retention or transfer of rehabilitated animals).

Burden Hours: 7,265.

Needs and Uses: This request is for a revision and extension of a currently approved information collection.

The Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.;* MMPA), Fur Seal Act (16 U.S.C. 1151 *et seq.;* FSA), and Endangered Species Act (16 U.S.C. 1531 *et seq.;* ESA) prohibit certain activities affecting marine mammals and endangered and threatened species, with exceptions. Pursuant to section 104 of the MMPA and Section 10(a)(1)(A) of the ESA, special exception permits may be obtained for scientific research and enhancing the survival or recovery of a species or stock of marine mammals or threatened or endangered species. Section 104 of the MMPA also includes permits for commercial and educational photography of marine mammals; import and capture of marine mammals for public display; and, Letters of Confirmation under the General Authorization for scientific research that involves minimal disturbance to marine mammals. The regulations implementing permits and reporting requirements under the MMPA and FSA are at 50 CFR part 216; the regulations for permit requirements under the ESA are at 50 CFR part 222. The required information in this collection is used to make the determinations required by the MMPA, ESA and their implementing regulations prior to issuing a permit; to establish appropriate permit conditions; and to evaluate the impacts of the proposed activity on protected species. Inventory reporting pertaining to marine mammals in public display facilities is required by the MMPA.

This information collection applies to certain protected species for which NMFS is responsible, including cetaceans (whales, dolphins and porpoises), pinnipeds (seals and sea lions), sawfish (largetooth and smalltooth), sea turtles (in water), and sturgeon (Atlantic and shortnose). The information collection may be used for future listed species.

The currently approved application and reporting requirements will be revised to (1) create separate sections for marine mammals versus non-mammal species where doing so will result in less burden to the applicant (*e.g.,* for scientific methods); (2) clarify to applicants why the information is required and what level of detail is needed for our analyses; (3) create 'enhanced help' features (*e.g.,* pop-up windows) in the online application system, Authorizations and Permits for Protected Species (APPS; *https://apps.nmfs.noaa.gov/*) to make the instructions more accessible; (4) create a streamlined application and online module in APPS for scientific research permits involving only import, export, or receipt of biological samples (*i.e.,* where no animals in the wild are affected); (5) make photography permit applications accessible via APPS.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; state, local and tribal government.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2016–19681 Filed 8–17–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE813

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Salmon Technical Team (STT) and Model Evaluation Workgroup (MEW) will hold a webinar, which is open to the public, to discuss and make recommendations on issues on the Council's September 2016 agenda.

DATES: The webinar will be held on Friday, September 2, from 1:30 p.m. until business for the day is complete.

ADDRESSES: To attend the webinar, visit: *http://www.gotomeeting.com/online/webinar/join-webinar.* Enter the Webinar ID, which is 152–433–643, and your name and email address (required). After logging in to the webinar, please: dial this TOLL number +1 (562)–247–8422 (not a toll-free number), enter the Attendee phone audio access code 724–010–245, and then enter your audio phone pin (shown after joining the webinar). Participants are required to use their telephone, as this is the best practice to avoid technical issues and excessive feedback. (See the *PFMC GoToMeeting Audio Diagram for best practices*). System Requirements for PC-based attendees: Windows® 7, Vista, or XP; for Mac®-based attendees: Mac OS® X 10.5 or newer; and for mobile attendees: iPhone®, iPad®, Android™ phone or Android tablet (See the GoToMeeting Webinar Apps).

You may send an email to *kris.kleinschmidt@noaa.gov* or contact him at (503) 820–2280, extension 425 for technical assistance. A public listening station will also be provided at the Pacific Council office.

Council address: Pacific Council, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Mike Burner, Pacific Council; phone: (503) 820–2414.

SUPPLEMENTARY INFORMATION: The STT and MEW will discuss items on the Pacific Council's September 2016 meeting agenda. Major topics include, but are not limited to, Salmon Methodology Review and the Sacramento River Winter Chinook Harvest Control Rule Update. The STT and MEW may also address one or more of the Council's scheduled Administrative Matters. Public comments during the webinar will be received from attendees at the discretion of the STT and MEW Chairs.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2425 at least 5 days prior to the meeting date.

Dated: August 15, 2016.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–19713 Filed 8–17–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE767

Permanent Advisory Committee To Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission; Meeting Announcement

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS announces a meeting of the Permanent Advisory Committee (PAC) to advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission (WCPFC) on October 6–October 7, 2016. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting of the PAC will be held on October 6, 2016, from 8 a.m. to 4 p.m. HST (or until business is concluded) and October 7, 2016, from 8 a.m. to 4 p.m. HST (or until business is concluded).

ADDRESSES: The meeting will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Hawaii 96814—in the Garden Lanai Meeting Room.

FOR FURTHER INFORMATION CONTACT: Emily Crigler, NMFS Pacific Islands Regional Office; telephone: 808–725–5036; facsimile: 808–725–5215; email: *emily.crigler@noaa.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), a Permanent Advisory Committee, or PAC, has been convened to advise the U.S. Commissioners to the WCPFC, certain members of which have been appointed by the Secretary of Commerce in consultation with the U.S. Commissioners to the WCPFC. The PAC supports the work of the U.S. National Section to the WCPFC in an advisory capacity. The U.S. National Section is made up of the U.S. Commissioners and the Department of State. NMFS Pacific Islands Regional Office provides administrative and technical support to the PAC in cooperation with the Department of State. The next regular annual session of the WCPFC (WCPFC13) is scheduled to be held December 5–December 9, 2016, in Fiji. More information on this meeting and the WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, can be found on the WCPFC Web site: *http://wcpfc.int/*.

Meeting Topics

The PAC meeting topics may include the following: (1) Outcomes of the 2015 Annual Meeting and 2016 sessions of the WCPFC Scientific Committee, Northern Committee, and Technical and Compliance Committee; (2) conservation and management measures for bigeye tuna, yellowfin tuna, skipjack tuna and other species for 2017 and beyond; (3) potential U.S. proposals to WCPFC13; (4) input and advice from the PAC on issues that may arise at WCPFC13; (5) potential proposals from other WCPFC members; and (6) other issues.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Emily Crigler at (808) 725–5036 by September 15, 2016.

Authority: 16 U.S.C. 6902.

Dated: August 15, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–19747 Filed 8–17–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE814

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Spiny Dogfish Advisory Panel (AP) will meet to review recent fishery performance and develop a Fishery Performance Report and/or other recommendations in preparation for the Council's review of specifications at the October 2016 Council meeting.

DATES: The meeting will be held Tuesday, September 6, 2016, from 2:30 p.m. to 5 p.m.

ADDRESSES: The meeting will be held via webinar, but anyone can also attend at the Council office address (see below). The webinar link is: *http://*

mafmc.adobeconnect.com/dogfishap2016/. Please call the Council at least 24 hours in advance if you wish to attend at the Council office.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State St., Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D. Executive Director, Mid-Atlantic Fishery Management Council; telephone: (302) 526–5255. The Council's Web site, *www.mafmc.org* also has details on the proposed agenda, webinar access, and briefing materials.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to create a Fishery Performance Report by the Council's Spiny Dogfish Advisory Panel. The intent of the report is to facilitate structured input from the Advisory Panel members into the specifications process. Spiny dogfish specifications were recently announced for the 2016–18 fishing years, but the Council and its Scientific and Statistical Committee (SSC) review the performance of multi-year specifications each year.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Saunders, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: August 15, 2016.

Tracey L. Thompson

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–19712 Filed 8–17–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 160810714–6714–01]

RIN 0660–XC029

The Incentives, Benefits, Costs, and Challenges to IPv6 Implementation

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice, request for public comment.

SUMMARY: Recognizing the exhaustion of Internet Protocol version 4 (IPv4) address space and the imperative for Internet Protocol version 6 (IPv6) implementation and use, the National Telecommunications and Information Administration (NTIA) is seeking input to guide NTIA in future IPv6 promotional activities. Through this Notice, NTIA invites adopters and implementers of IPv6 as well as any other interested stakeholders to share information on the benefits, costs, and challenges they have experienced, as well as any insight into additional incentives that could aid future adoption, implementation, and support of IPv6. After analyzing the comments, the Department intends to aggregate input received into a report that will be used to inform domestic and global efforts focused on IPv6 promotion, including any potential NTIA initiatives.

DATES: Comments are due on or before 5 p.m. Eastern Time on October 3, 2016.

ADDRESSES: Written comments may be submitted by email to *ipv6@ntia.doc.gov*. Comments submitted by email should be machine-readable and should not be copy-protected. Written comments also may be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4725, Attn: IPv6 RFC 2016, Washington, DC 20230. Responders should include the name of the person or organization filing the comment, as well as a page number on each page of the submission. All comments received are a part of the public record and will generally be posted to *https://www.ntia.doc.gov/federal-register-notice/2016/incentives-benefits-costs-and-challenges-ipv6-implementation* without change. All personal identifying information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Please do not submit business information that is confidential or otherwise protected. NTIA will accept anonymous comments.

FOR FURTHER INFORMATION CONTACT: Ashley Heineman, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4701, Washington, DC 20230; telephone (202) 482–0298; email *aheineman@ntia.doc.gov*. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002 or by email at *press@ntia.doc.gov*.

SUPPLEMENTARY INFORMATION:

Background: NTIA regularly seeks public input to help guide future action and policy decisions that address today's critical communications and technology issues. In this notice, NTIA seeks input concerning the adoption and deployment of Internet Protocol version 6 (IPv6). Every device that connects to the Internet requires an IP address. However, the tremendous demand for Internet connections has, for all intents and purposes, exhausted the supply of IP addresses available under the legacy Internet Protocol version 4 (IPv4) system. IPv6 is the next-generation protocol which provides an identification and location system for computers on networks, and which routes traffic across the Internet.

The transition to IPv6, which was designed to expand the number of IP addresses, is critical for the continued, sustainable growth of the Internet. While IPv4 provides nearly 4.3 billion IP addresses, IPv6 offers 2^{128} (or 340,282,366,920,938,463,463,374,607,431,768,211,456 IP addresses), a number more able to meet the rising demand for Internet connections and to support the expanding Internet of Things. This demand will continue to grow as more devices come online.

Even during the relatively early days of the Internet, its exponential growth soon exposed the limitations of IPv4. Once the Internet technical community realized in the early 1990s that there would be a shortage of IP addresses, the Internet Engineering Task Force began developing a new protocol to expand the Internet address space. The first specification of the IPv6 standard was published in 1995 and an updated draft followed closely thereafter in 1998.[1] Despite the long history of IPv6, today only 32 percent of the Internet services in the United States are IPv6 capable.[2] While the IPv6 adoption rate in the United States is growing at a quicker pace than in the past, companies and other organizations that have yet to plan for IPv6 should begin implementation now rather than later, in order to lay a solid foundation for the future of our digital economy.

NTIA IPv6 Promotional Efforts: NTIA is already engaged in IPv6 promotional efforts. NTIA held a public workshop on IPv6 in 2010, and in 2011 developed the *IPv6 Readiness Tool for Businesses,* a comprehensive checklist for businesses preparing to deploy IPv6.[3] NTIA also joined a number of private and public organizations in 2011 for the Internet

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[1] *See* "Internet Protocol, Version 6 (IPv6) Specification," December 1998, *available at: https://tools.ietf.org/html/rfc2460*.

[2] According to measurements conducted by the Asia Pacific Network Information Center, *available at: https://stats.labs.apnic.net/ipv6/*.

[3] NTIA also coauthored a study with the National Institute for Standards and Technology in 2006, entitled "A Technical and Economic Assessment of IPv6." These and other resources are listed on the "Additional IPv6 Resources" page on NTIA's Web site, *available at: http://www.ntia.doc.gov/page/additional-ipv6-resources*.

Society's World IPv6 Day to test the IPv6 functionality of Web sites and services.

Moving forward, NTIA intends to engage more directly in promoting IPv6 deployment and use, with a particular focus on implementation. To assist in this purpose, NTIA is asking those who have implemented IPv6 to share their experiences and to highlight in particular the factors and circumstances that supported their decision to move ahead and adopt the protocol. NTIA hopes to utilize input received through this request for comments to guide and inform future promotion efforts, including the IPv6 Best Practice Forum being organized for the 2016 Internet Governance Forum, which will be held in December 2016, in Guadalajara, Mexico.[4]

Request for Comment

NTIA invites comment on the following questions, in whole or in part:

Benefits

1. What are the benefits of implementing IPv6? For example, what are the direct performance benefits of implementing IPv6 for end users, or for enhanced network security, as compared to IPv4?

2. What are the expected or unexpected benefits of implementing IPv6?

Obstacles

1. What are the biggest obstacles related to IPv6 implementation? For example, is it difficult to access adequate vendor support for IPv6 hardware and/or software? Does successful implementation depend directly on another service provider?

2. How does an organization overcome those obstacles?

Incentives

1. What factors contribute to an organization's decision to implement IPv6?

2. What additional incentives would be helpful in a decision to implement IPv6?

3. If one factor made the crucial difference in deciding to implement IPv6, as opposed to not implementing IPv6, what is that factor?

Motivation

1. What is typically the driving motivation behind an organization's decision to implement IPv6?

2. What are the job titles and/or roles of the people within an organization typically involved in a decision to implement IPv6? What are those individuals' primary motivations when it comes to implementing IPv6?

Return on Investment

1. What is the anticipated return on an IPv6-related investment? How quickly is a return on investment expected?

2. Is return on investment a reason to implement IPv6, or is implementation considered a cost of doing business?

Implementation

1. How long does the planning process for IPv6 implementation take?

2. How long does actual implementation of IPv6 typically take? Is implementation a single event or evolutionary?

Cost of Implementation

1. What are the different types of costs involved in implementing IPv6? What are the typical magnitudes of each type of cost?

2. How does an organization cover those costs?

3. How does an organization justify those costs?

4. What considerations are there for cost-saving?

5. What implication does the size of an organization implementing IPv6 have on cost?

Promotional Efforts

1. What promotional efforts, if any, should NTIA take? What would have the most impact?

2. What promotional efforts, if any, are being led by the private sector? Have they been effective?

3. Which additional stakeholders should NTIA target? What is the most effective forum?

4. Should NTIA partner with any particular stakeholder group?

Additional Issues: NTIA invites commenters to provide any additional information on other issues not identified in this RFC that could contribute to NTIA's understanding of the considerations that organizations take into account when deciding to proceed with IPv6 implementation, as well as future IPv6 promotional efforts that NTIA may undertake.

Dated: August 15, 2016.

Angela M. Simpson,

Deputy Assistant Secretary for Communications and Information.

[FR Doc. 2016–19722 Filed 8–17–16; 8:45 am]

BILLING CODE 3510–60–P

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[4] Internet Governance Forum 2016, *available at: http://www.igf2016.mx/.*

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled AmeriCorps NCCC's (National Civilian Community Corps) Member Experience Survey for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Terry Grant, at 202 606 6899 or email to *tgrant@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

DATES: Comments may be submitted, identified by the title of the information collection activity, within September 19, 2016.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: 202–395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including

through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day Notice requesting public comment was published in the **Federal Register** on March 30, 2016, at Vol. 81, No. 61 FR 17686–17687. This comment period ended May 31, 2016. No public comments were received from this Notice.

Description: This is a new information collection request. This survey was developed to support NCCC performance measurement for use in program development, funding, and evaluation. The survey instrument will be completed by NCCC Members following the completion of their service term. In particular, this survey will be administered to NCCC Members who are exiting early or have already exited early from the AmeriCorps NCCC program. Completion of this information collection is not required for the completion of a service term with NCCC.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: NCCC Member Experience Survey.

OMB Number: TBD.

Agency Number: None.

Affected Public: The NCCC Member Experience Survey will be administered to former NCCC Members.

Total Respondents: Approximately 450.

Frequency: Each respondent will complete only one survey for their most recent service term.

Average Time per Response: 25 minutes.

Estimated Total Burden Hours: 187.5 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: August 11, 2016.

Charles Davenport,

Acting Director, National Civilian Community Corps.

[FR Doc. 2016–19655 Filed 8–17–16; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Flood Risk Management Project for the Souris River Basin, North Dakota

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The St. Paul District, Army Corps of Engineers, in partnership with the Souris River Joint Water Resources Board (SRJB), is conducting a flood risk management feasibility study for the Souris River Basin within the continental United States. The feasibility study will include an Environmental Impact Statement and consider opportunities to reduce flood risk within Bonnineau, McHenry, Ward, and Renville counties, North Dakota. The study will evaluate several alternative measures, including, but not limited to: Levees and floodwalls, diversion channels, non-structural flood proofing, relocation of flood-prone structures, and flood storage.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Environmental Impact Statement may be directed to: U.S. Army Corps of Engineers, St. Paul District, ATTN: Mr. Terry J. Birkenstock, Deputy Chief, Regional Planning & Environment Division North, 180 Fifth Street East, Suite 700, St. Paul, MN 55101–1678; telephone: (651) 290–5264; email *terry.birkenstock@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The Souris River (alternatively known as the Mouse River) is approximately 435 miles long. The river begins in the southeastern portion of the Canadian province of Saskatchewan, flows south and east through Renville, Ward, McHenry, and Bottineau counties, North Dakota, and then turns north before returning to Canada in southwest Manitoba. The river flows through the cities of Burlington, Minot, Sawyer, and Velva, North Dakota. Key features associated with the river include the Lake Darling Dam, the Upper Souris National Wildlife Refuge, and the J. Clark Salyer National Wildlife Refuge. The Des Lacs River is a major tributary that joins the Souris River at Burlington, North Dakota.

The purpose of this study is to collect and evaluate pertinent engineering, economic, social, and environmental information in order to assess the potential for a federal flood risk management project within the basin. The study objective is to define a feasible and implementable project to reduce flood risk which is relatively high within the basin. In June 2011, heavy rains in the upstream portions of the watershed exceeded the storage capacity of upstream reservoirs already full from the April snowmelt. Flows in excess of 26,900 cubic feet per second (cfs) overwhelmed the existing Federal flood risk management projects (designed to pass 5,000 cfs from Burlington to Minot) and emergency flood fighting efforts, causing over $690 million in damages to more than 4,700 structures.

Following the 2011 flood, a non-Federal local flood risk management study was initiated by the North Dakota State Water Commission in response to a request for assistance from the SRJB. The scope of the non-Federal study, identified as the Mouse River Enhanced Flood Protection Plan (MREFPP), differs from the Federal study and is primarily focused on flood protection specifically for the city of Minot. Because of its influence on an existing federal flood project, this non-federal effort has requested permission from the Corps of Engineers to pursue actions under 33 U.S.C. 408 (frequently referred to as Section 408). A separate Notice of Intent was published (FR Doc. 2015–17670 Filed 7–16–15) for an EIS associated with the Corps of Engineers' decision on the Section 408 request. However, this Notice of Intent involves an EIS with broader consideration of flood risk across the basin. Additional details on the local, non-federal flood MREFPP can be found at *mouseriverplan.com.*

This Souris River Basin Flood Risk Management Feasibility Study and its associated NEPA documentation will be prepared by the Corps. The Corps will act as the lead agency and coordinate with other agencies to discuss their participation in the NEPA process. The study will broadly evaluate several alternative measures including, but not limited to: levees and floodwalls along the river through towns, diversion channels, non-structural flood-proofing, relocation of flood-prone structures, and flood storage.

Significant resources and issues to be addressed in the draft Environmental Impact Statement will be determined through coordination with Federal agencies, State agencies, local governments, the general public, interested private organizations, and industry. Anyone who has an interest in participating in the development of the Draft Environmental Impact Statement is invited to contact the St. Paul District, Corps of Engineers.

To date, the following areas of discussion have been identified for inclusion in the DEIS:

1. Flood damage reduction.
2. Effects to Fish and wildlife.
3. Land-use Effects (effects on agricultural land).
4. Effects to Archaeological, cultural, and historic resources.
5. Social Effects.
6. Effects to Groundwater.

Additional areas of interest may be identified through the scoping process, which will include pubic and agency meetings. A notice of those meetings will be provided to interested parties and to local news media.

The Corps anticipates holding a series of scoping meetings sometime in October, 2016 in the City of Minot and surrounding communities. In general, the meetings will begin with an open house and be followed by a presentation and question and answer session.

An environmental review will be conducted under the NEPA of 1969 and other applicable laws and regulations. It is anticipated that the DEIS will be available for public review in the fall of 2017.

Dated: August 11, 2016.

Terry J. Birkenstock,

Deputy Chief, Regional Planning and Environment Division North.

[FR Doc. 2016–19738 Filed 8–17–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Electricity Advisory Committee

AGENCY: Office of Electricity Delivery and Energy Reliability, Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Electricity Advisory Committee's (EAC) charter has been renewed for a two-year period beginning on August 8, 2014.

The Committee will provide advice and recommendations to the Assistant Secretary for Electricity Delivery and Energy Reliability on programs to modernize the Nation's electric power system.

Additionally, the renewal of the EAC has been determined to be essential to conduct Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, adhering to the rules and regulations in implementation of that Act.

FOR FURTHER INFORMATION CONTACT: Matt Rosenbaum, Designated Federal Officer at (202) 586–1060.

Issued in Washington, DC, on August 8, 2016.

Amy Bodette,

Committee Management Officer.

[FR Doc. 2016–19525 Filed 8–17–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 14, 2016, 6:00 p.m.

ADDRESSES: Olive Garden Meeting Room, 7206 Kingston Pike, Knoxville, Tennessee 37919.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Alternate Deputy Designated Federal Officer, U.S. Department of Energy, Oak Ridge Office of Environmental Management, P.O. Box 2001, EM–942, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 241–6932; E-Mail: *Melyssa.Noe@orem.doe.gov*. Or visit the Web site at *www.energy.gov/orssab*.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer (DDFO)
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Discussion: Vision 2020—Planning for the Future of East Tennessee Technology Park, including Reuse, Historic Preservation and Stewardship
- Additions/Approval of Agenda
- Motions/Approval of June 8, 2016 Meeting Minutes
- Status of Recommendations with DOE
- Committee Reports
- Alternate DDFO Report
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *www.energy.gov/orssab*.

Issued at Washington, DC, on August 12, 2016.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2016–19719 Filed 8–17–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–488–000]

Natural Gas Pipeline Company of America, LLC; Notice of Application

Take notice that on August 1, 2016, Natural Gas Pipeline Company of America, LLC (Natural), 3250 Lacey Road, Suite 700, Downers Grove, IL 60515, filed an application under sections 7(b) and 7(c) of the Natural Gas

Act (NGA), and Part 157 of the Commission's regulations, requesting authorization to construct and operate a new compressor station and associated pipeline lateral located in Cass County, Texas (Gulf Coast Expansion Project). Natural is also requesting authorization to abandon two compressor units at its Compressor Station 301 in Wharton County, Texas, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Natural proposes to provide long-term firm transportation service to two shippers that have subscribed to the capacity created by the Project. The Project capacity is developed through the integration of existing capacity and expansion capacity of 240,000 Dth/day which will enable Natural to transport 460,000 Dth per day of natural gas supplies to an existing delivery point and a new delivery point in the South Texas Gulf Coast area. The project shippers have elected negotiated rates. Natural proposes to construct a new 15,900 horsepower compressor station on its Gulf Coast Line, and a new 4,000-foot, 30-inch lateral to connect the proposed compressor to Natural's existing A/G Line. Natural also proposes to abandon 5,600 hp of existing compression on its system. Total cost of the project is $69,399,000.

The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, (202) 502–8659.

Any questions regarding the proposed project should be directed to Bruce H. Newsome, Vice President, Natural Gas Pipeline Company of America, LLC, 3250 Lacey Road, Suite 700, Downers Grove, IL 60515, or by calling (630) 725–3070 (telephone) or email at *bruce_newsome@kindermorgan.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Comment Date: September 2, 2016.

Dated: August 12, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–19752 Filed 8–17–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–489–000]

Notice of Request Under Blanket Authorization: WBI Energy Transmission, Inc.

Take notice that on August 5, 2016, WBI Energy Transmission, Inc. (WBI Energy), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed in Docket No. CP16–489–000 a prior notice request pursuant to § 157.205, 157.210, and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA), as amended, requesting authorization to construct, operate, and abandon certain natural gas facilities in McKenzie and Williams Counties, North Dakota. WBI Energy states that the proposed activities will allow it to deliver 62,000 dekatherms per day of natural gas transportation service. WBI Energy estimates the cost of the proposed facilities to be approximately $18.4 million, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Specifically, WBI Energy proposes to: (1) Install two new compressor units, totaling 5,325 horsepower (HP), at its

Charbonneau Station located in McKenzie County, North Dakota; (2) install a new 1,380 HP compressor unit at its Williston Station located in Williams County, North Dakota; (3) construct a new 750 HP compressor station (Tioga Station) located in Williams County, North Dakota; (4) construct approximately 2,850 feet of 8-inch-diameter pipeline located in Williams County, North Dakota; and (5) abandon in-place approximately 1,375 feet of 8-inch-diameter pipeline located in Williams County, North Dakota.

Any questions concerning this application may be directed to Lori Myerchin, Manager, Regulatory Affairs, WBI Energy Transmission, Inc., 1250 West Century Avenue, Bismarck, North Dakota 58503, by telephone at (701) 530–1563 or by email at *lori.myerchin@wbienergy.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to § 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: August 12, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–19753 Filed 8–17–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER16–2393–000]

Innovative Solar 31, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Innovative Solar 31, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is September 1, 2016.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 12, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–19754 Filed 8–17–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5073–096]

Benton Falls Associates, New York LP, Everett E. Whitman; Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

On August 2, 2016, Benton Falls Associates, New York LP, co-licensee (transferor) filed an application for after-the-fact transfer of license of the Benton Falls Project No. 5073. The project is located on the Sebasticook River in Kennebec County, Maine.

The applicants seek Commission approval to transfer the license for the Benton Falls Project from Benton Falls Associates, New York LP and Everett E. Whitman (deceased) as co-licensees to Benton Falls Associates, New York LP as the sole licensee.

Applicants Contact: Mr. Andrew Locke, Benton Falls Associates, L.L.C., c/o Essex Hydro Associates, LLC, 55 Union Street, 4th Floor, Boston, MA 02108, Phone: 617–367–0032, Email: *alocke@essexhydro.com.*

FERC Contact: Patricia W. Gillis, (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments, motions to intervene, and protests: 30 days from the date that the Commission issues this notice. The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–5073–096.

Dated: August 12, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–19755 Filed 8–17–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC16–166–000.

Applicants: CXA Sundevil Power I, Inc., CXA Sundevil Power II, Inc., Sundevil Power Holdings, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act, Request for Waiver of Certain Commission Requirements, and Request for Expedited Treatment of CXA Sundevil Power I, Inc., et al.

Filed Date: 8/11/16.

Accession Number: 20160811–5214.

Comments Due: 5 p.m. ET 9/1/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–135–000.

Applicants: Oregon Clean Energy, LLC.

Description: Oregon Clean Energy, LLC Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 8/12/16.

Accession Number: 20160812–5068.

Comments Due: 5 p.m. ET 9/2/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1732–001; ER10–2743–009; ER10–1854–007; ER10–2755–012; ER16–1652–002; ER10–2739–014; ER11–3320–007; ER10–2751–009; ER10–2744–008; ER16–2406–001; ER16–2405–001; ER13–2316–005; ER10–1631–007; ER14–19–005.

Applicants: Aurora Generation, LLC, Bluegrass Generation Company, L.L.C., Doswell Limited Partnership, Las Vegas Power Company, LLC, LifeEnergy, LLC, LS Power Marketing, LLC, LSP University Park, LLC, Renaissance Power, L.L.C., Riverside Generating Company, L.L.C., Rockford Power, LLC, Rockford Power II, LLC, Seneca Generation, LLC, University Park Energy, LLC, West Deptford Energy, LLC.

Description: Notification of Change in Status of the LS PJM MBR Sellers, et al.

Filed Date: 8/11/16.

Accession Number: 20160811–5224.

Comments Due: 5 p.m. ET 9/1/16.

Docket Numbers: ER16–1920–001.

Applicants: Tucson Electric Power Company.

Description: Compliance filing: Tariff Record Correction to be effective 8/15/2016.

Filed Date: 8/12/16.

Accession Number: 20160812–5117.

Comments Due: 5 p.m. ET 9/2/16.

Docket Numbers: ER16–2410–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2208R2 Ensign Wind, LLC GIA Cancellation to be effective 5/13/2016.

Filed Date: 8/12/16.

Accession Number: 20160812–5042.

Comments Due: 5 p.m. ET 9/2/16.

Docket Numbers: ER16–2411–000.

Applicants: Luning Energy Holdings LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 10/12/2016.

Filed Date: 8/12/16.

Accession Number: 20160812–5049.

Comments Due: 5 p.m. ET 9/2/16.

Docket Numbers: ER16–2411–001.

Applicants: Luning Energy Holdings LLC.

Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 10/12/2016.

Filed Date: 8/12/16.

Accession Number: 20160812–5052.

Comments Due: 5 p.m. ET 9/2/16

Docket Numbers: ER16–2412–000.

Applicants: Luning Energy LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 10/12/2016.

Filed Date: 8/12/16

Accession Number: 20160812–5050.

Comments Due: 5 p.m. ET 9/2/16.

Docket Numbers: ER16–2412–001.

Applicants: Luning Energy LLC.

Description: Tariff Amendment: Supplement to Application for Market-Based Rate Authorization to be effective 10/12/2016.

Filed Date: 8/12/16.

Accession Number: 20160812–5053.

Comments Due: 5 p.m. ET 9/2/16.

Docket Numbers: ER16–2413–000.

Applicants: Liberty Utilities (Granite State Electric) Corp.

Description: § 205(d) Rate Filing: Borderline Sales Rate Sheet Update 2016 to be effective 7/1/2016.

Filed Date: 8/12/16.

Accession Number: 20160812–5078.

Comments Due: 5 p.m. ET 9/2/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 12, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–19756 Filed 8–17–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–2414–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Service Agreement Nos. 4511 and 4512, Queue Positions AB1–127 and AB1–128 to be effective 7/13/2016.

Filed Date: 8/12/16.

Accession Number: 20160812–5145.

Comments Due: 5 p.m. ET 9/2/16.

Docket Numbers: ER16–2415–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits Second Quarter 2016 Capital Budget Report.

Filed Date: 8/12/16.

Accession Number: 20160812–5153.

Comments Due: 5 p.m. ET 9/2/16.

Docket Numbers: ER16–2416–000.

Applicants: Central Maine Power Company.

Description: § 205(d) Rate Filing: Amended CSIA with Brookfield White Pine Hydro LLC to be effective 8/1/2016.

Filed Date: 8/12/16.

Accession Number: 20160812–5160.

Comments Due: 5 p.m. ET 9/2/16.

Docket Numbers: ER16–2417–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2016–08–12_Removal of MVP Pricing Limitation to PJM (ER10–1791) to be effective 7/13/2016.

Filed Date: 8/12/16.

Accession Number: 20160812–5197.

Comments Due: 5 p.m. ET 9/2/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 12, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–19750 Filed 8–17–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Schedule for Environmental Review of the Atlantic Coast Pipeline and the Supply Header Project

	Docket Nos.
Atlantic Coast Pipeline, LLC	CP15–554–000 CP15–554–001
Dominion Transmission, Inc	CP15–555–000

On September 18, 2015, Atlantic Coast Pipeline, LLC (Atlantic) and Dominion Transmission, Inc. (Dominion) filed applications in Docket Nos. CP15–554–000 and CP15–555–000 requesting a Certificate of Public Convenience and Necessity pursuant to Sections 7(b) and 7(c) of the Natural Gas Act to construct, operate, and maintain certain natural gas pipeline facilities. Atlantic's proposed Atlantic Coast Pipeline in West Virginia, Virginia, and North Carolina would transport about 1.5 billion cubic feet per day of natural gas from production areas in the Appalachian Basin to markets in Virginia and North Carolina. Dominion's proposed Supply Header Project in Pennsylvania and West Virginia would allow additional gas transportation on its existing system and would transport gas to various customers, including Atlantic. Because these are interrelated projects, the Federal Energy Regulatory Commission (FERC or Commission) deemed it was appropriate to analyze them in a single environmental impact statement (EIS).

On October 2, 2015, the FERC issued its Notice of Application for the projects. Among other things, that notice alerted other agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on the request for a federal authorization within 90 days of the date of issuance of the Commission staff's final EIS for the Atlantic Coast Pipeline and Supply Header Project. This instant notice identifies the FERC staff's planned schedule for completion of the final EIS for the projects, which is based on an issuance of the draft EIS in December 2016.

Schedule for Environmental Review

Issuance of Notice of Availability of the final EIS: June 30, 2017.

90-day Federal Authorization Decision Deadline: September 28, 2017.

If a schedule change becomes necessary for the final EIS, an additional notice will be provided so that the relevant agencies are kept informed of the projects' progress.

Project Description

The Atlantic Coast Pipeline consists of 333.1 miles of 42-inch-diameter mainline pipeline in West Virginia, Virginia, and North Carolina; 186.0 miles of 36-inch-diameter mainline pipeline in North Carolina; 83.0 miles of 20-inch-diameter lateral pipeline in North Carolina and Virginia; and two short 16-inch-diameter lateral pipelines in Brunswick and Greenville Counties, Virginia. In addition, Atlantic proposes to construct and operate three new compressor stations totaling 130,345 horsepower in Lewis County, West Virginia; Buckingham County, Virginia; and Northampton County, North Carolina, along with other aboveground facilities along the mainline and lateral pipelines.

The Supply Header Project consists of 3.9 miles of 30-inch-diameter pipeline loop in Westmoreland County, Pennsylvania; 33.6 miles of 30-inch-diameter pipeline loop in West Virginia; and modifications to four existing compressor stations in Westmoreland County, Pennsylvania; Greene County, Pennsylvania; and Marshall and Wetzel Counties, West Virginia.

Background

On November 13, 2014, the Commission staff granted Atlantic's and Dominion's request to use the FERC's Pre-filing environmental review process and assigned the Atlantic Coast Pipeline temporary Docket No. PF15–6–000 and the Supply Header Project temporary Docket No. PF15–5–000. On February 27, 2015, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Supply Header Project and Atlantic Coast Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI). On March 22, 2016, the FERC issued a *Notice of Amendment to Application* announcing that Atlantic had filed an amendment to its application. On May 3, 2016, the Commission issued a Supplemental NOI that discussed the amendments to Atlantic's application and opened a scoping period for route modifications that Atlantic incorporated into the Atlantic Coast Pipeline.

The NOIs were sent to our environmental mailing list that include federal, state, and local government agencies; elected officials; affected landowners; regional environmental groups and nongovernmental organizations; Native Americans and Indian tribes; local libraries and newspapers; and other interested parties. Major environmental issues raised during scoping included karst terrain and caves; impacts on groundwater and springs, drinking water supplies, and surface waterbodies; impacts on forest; impacts on property values and the use of eminent domain; impacts on tourism; impacts on public recreational areas such as the Monongahela and George Washington National Forests, Appalachian National Scenic Trail, and the Blue Ridge Parkway; impacts on historic properties and districts; and pipeline safety.

The U.S. Department of Agriculture, Forest Service, Monongahela National Forest and George Washington National Forest; U.S. Army Corps of Engineers; U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service, Great Dismal Swamp National Wildlife Refuge; West Virginia Department of Environmental Protection; and West Virginia Division of Natural Resources are cooperating agencies in the preparation of the EIS.

Additional Information

In order to receive notification of the issuance of the EIS and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription (*http://www.ferc.gov/docs-filing/esubscription.asp*). Additional data about the projects can be obtained electronically through the Commission's Internet Web site (*www.ferc.gov*). Under "Dockets & Filings," use the "eLibrary" link, select "General Search" from the menu, enter the docket numbers excluding the last three digits (*i.e.,* CP15–554 or CP15–555), and the search dates. Questions about the projects can be directed to the Commission's Office of External Affairs at (866) 208–FERC.

Dated: August 12, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–19751 Filed 8–17–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9951–02—Region 1]

Program Requirement Revisions Related to the Public Water System Supervision Programs for the Commonwealth of Massachusetts, the State of Rhode Island and the State of Vermont

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commonwealth of Massachusetts, the State of Rhode Island and the State of Vermont are in the process of revising their respective approved Public Water System Supervision (PWSS) programs to meet the requirements of the Safe Drinking Water Act (SDWA).

The Commonwealth of Massachusetts has adopted drinking water regulations for the Ground Water Rule (71 FR 65574) promulgated on November 8, 2006, the Long Term 2 Enhanced Surface Water Treatment Rule (71 FR 654) promulgated on January 5, 2006, and the Stage 2 Disinfectant and Disinfection Byproducts Rule (71 FR 388) promulgated on January 4, 2006. After review of the submitted documentation, the Environmental Protection Agency (EPA) has determined that the Commonwealth of Massachusetts' Ground Water Rule, Long Term 2 Enhanced Surface Water Treatment Rule, and Stage 2 Disinfectant and Disinfection Byproducts Rule are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve Massachusetts' PWSS program revision for these rules.

The State of Rhode Island has adopted drinking water regulations for the Lead and Copper Rule (56 FR 26460–26564) promulgated on June 7, 1991, the Lead and Copper Minor Revisions Rule (65 FR 1950) promulgated on January 12, 2000, the Lead and Copper Short-Term Revisions Rule (72 FR 57782) promulgated on October 10, 2007, the Ground Water Rule (71 FR 65574) promulgated on November 8, 2006, and the Stage 2 Disinfectant and Disinfection Byproducts Rule (71 FR 388) promulgated on January 4, 2006. After review of the submitted documentation, EPA has determined that the State of Rhode Island's Lead and Copper Rule, Lead and Copper Short-Term Revisions Rule, Lead and Copper Minor Revisions Rule, Ground Water Rule, and Stage 2 Disinfectant and Disinfection Byproducts Rule are no less stringent than the corresponding federal regulations, with the understanding that the state regulations include a small number of typographical errors or other very minor, non-substantive differences that the state has agreed to correct. These issues are discussed in further detail in EPA's administrative record. Therefore, EPA intends to approve Rhode Island's PWSS program revision for these rules.

The State of Vermont has adopted drinking water regulations for the Ground Water Rule (71 FR 65574) promulgated on November 6, 2008, the Long Term 2 Enhanced Surface Water Treatment Rule (71 FR 654) promulgated on January 5, 2006, and the Stage 2 Disinfectant and Disinfection Byproducts Rule (71 FR 388) promulgated on January 4, 2006. After review of the submitted documentation, EPA has determined that the State of Vermont's Ground Water Rule, Long Term 2 Enhanced Surface Water Treatment Rule, and Stage 2 Disinfectant and Disinfection Byproducts Rule are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve Vermont's PWSS program revision for these rules.

DATES: All interested parties may request a public hearing for any of the above EPA determinations. A request for a public hearing must be submitted within thirty (30) days of this **Federal Register** publication date to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by this date, a public hearing will be held. If no timely and appropriate request for a hearing is received, and the Regional Administrator does not elect to hold a hearing on his/her own motion, this determination shall become final and effective 30 days after the publication of this **Federal Register** Notice. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination; (3) information that the requesting person intends to submit at such hearing; and (4) the signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday, at the following office(s):

U.S. Environmental Protection Agency, Office of Ecosystem Protection, 5 Post Office Square, Suite 100, Boston, MA 02109–3912.

For documents specific to that State:

Massachusetts Department of Environmental Protection, Division of Water Supply, 1 Winter Street, 6th Floor, Boston, MA 02108.

Rhode Island Department of Public Health, Division of Drinking Water Quality, 3 Capitol Hill, Providence, RI 02908–5097.

Vermont Department of Environmental Conservation, Water Supply Division, Agency of Natural Resources, 103 South Main Street, Old Pantry Building, Waterbury, VT 05671–0403.

FOR FURTHER INFORMATION: Jeri Weiss, U.S. EPA—New England, Office of Ecosystem Protection (telephone 617–918–1568).

Authority: Section 1401 (42 U.S.C. 300f) and Section 1413 (42 U.S.C. 300g–2) of the Safe Drinking Water Act, as amended (1996), and (40 CFR 142.10) of the National Primary Drinking Water Regulations.

Dated: August 11, 2016.

H. Curtis Spalding,

Regional Administrator, EPA—New England.

[FR Doc. 2016–19786 Filed 8–17–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0021; FRL–9949–75]

Pesticide Product Registrations; Receipt of Applications for New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before September 19, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number and the File Symbol of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *BPPDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *File Symbol:* 84059–EI. *Docket ID number:* EPA–HQ–OPP–2016–0386. *Applicant:* Marrone Bio Innovations, 1540 Drew Ave., Davis, CA 95618. *Product name:* MBI–110 EP. *Active ingredient:* Fungicide and bactericide—*Bacillus amyloliquefaciens* strain F727 at 96.4%. *Proposed use:* For control or suppression of fungal and bacterial plant diseases, including those affecting agricultural crops.

2. *File Symbol:* 84059–EO. *Docket ID number:* EPA–HQ–OPP–2016–0386. *Applicant:* Marrone Bio Innovations, 1540 Drew Ave., Davis, CA 95618. *Product name:* MBI–110 TGAI. *Active ingredient:* Fungicide and bactericide—*Bacillus amyloliquefaciens* strain F727 at 100%. *Proposed use:* For manufacturing of *Bacillus amyloliquefaciens* strain F727 pesticide products.

3. *File Symbol:* 90866–EN. *Docket ID number:* EPA–HQ–OPP–2016–0260. *Applicant:* Spring Trading Co., 203 Dogwood Trl., Magnolia, TX 77354 (on behalf of CH Biotech R&D Co. Ltd., No. 121 Xian An Rd., Xianxi Township, Changhua County 50741 Taiwan). *Product name:* Triacontanol 20 SP. *Active ingredient:* Plant regulator—1-Triacontanol at 19.2%. *Proposed use:* For use on agricultural crops, including cereal grains, fruiting vegetables, stone fruit, nut crops, and cotton.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 10, 2016.

Robert C. McNally,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 2016–19762 Filed 8–17–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0009 and EPA–HQ–OPP–2014–0011; FRL–9950–20]

Pesticide Product Registration; Receipt of Applications for New Uses and New Active Ingredients

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before September 19, 2016.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

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2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register pesticide products containing active ingredients not included in any currently registered pesticide products. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

A. New Active Ingredients (AI)

1. *File number:* 7969–GIO (Versys Insecticide; Decision No. 516387). *Docket number:* EPA–HQ–OPP–2016–0416. *Company name and address:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. *Active ingredient:* Afidopyropen. *Proposed uses:* Almond hulls; apple, wet pomace; citrus oil; cotton, gin byproducts; cotton, undelinted seed; fruit, citrus, group 10–10; fruit, pome, group 11–10; fruit, stone, group 12–12; nut, tree, group 14–12; plum, prune; soybean, aspirated fractions; soybean, forage; soybean, hay; soybean, seed; vegetable, *Brassica,* head and stem group 5–13; vegetable, cucurbit, group 9; vegetable, fruiting, group 8–10; vegetable, leaf petioles, subgroup 22B; vegetable, leafy, subgroup 4–13A; vegetable, leafy, subgroup 4–13B; and vegetable, tuberous and corm, subgroup 1C. Contact: Carmen Rodia (703) 306–0327; email: *rodia.carmen@epa.gov.*

2. *File number:* 7969–GON (INSCALIS Technical Insecticide; Decision No. 516381). *Docket number:* EPA–HQ–OPP–2016–0416. *Company name and address:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. *Active ingredient:* Afidopyropen. *Proposed uses:* Almond hulls; apple, wet pomace; citrus oil; cotton, gin byproducts; cotton, undelinted seed; fruit, citrus, group 10–10; fruit, pome, group 11–10; fruit, stone, group 12–12; nut, tree, group 14–12; plum, prune; soybean, aspirated fractions; soybean, forage; soybean, hay; soybean, seed; vegetable, *Brassica,* head and stem group 5–13; vegetable, cucurbit, group 9; vegetable, fruiting, group 8–10; vegetable, leaf petioles, subgroup 22B; vegetable, leafy, subgroup 4–13A; vegetable leafy, subgroup 4–13B; and vegetable, tuberous and corm, subgroup 1C. *Contact:* Carmen Rodia (703) 306–0327; email: *rodia.carmen@epa.gov.*

3. *File number:* 7969–GOR (Sefina Insecticide; Decision No. 516382). *Docket number:* EPA–HQ–OPP–2016–0416. *Company name and address:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. *Active ingredient:* Afidopyropen. *Proposed uses:* Almond hulls; apple, wet pomace; citrus oil; cotton, gin byproducts; cotton, undelinted seed; fruit, citrus, group 10–10; fruit, pome, group 11–10; fruit, stone, group 12–12; nut, tree, group 14–12; plum, prune; soybean, aspirated fractions; soybean, forage; soybean, hay; soybean, seed; vegetable, *Brassica,* head and stem group 5–13; vegetable, cucurbit, group 9; vegetable, fruiting, group 8–10; vegetable, leaf petioles, subgroup 22B; vegetable, leafy, subgroup 4–13A; vegetable leafy, subgroup 4–13B; and vegetable, tuberous and corm, subgroup 1C.

Contact: Carmen Rodia (703) 306–0327; email: *rodia.carmen@epa.gov.*

4. *File number:* 7969–GOE (Inveris Insecticide; Decision No. 516384). *Docket number:* EPA–HQ–OPP–2016–0416. *Company name and address:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. *Active ingredient:* Afidopyropen. *Proposed uses:* Almond hulls; apple, wet pomace; citrus oil; cotton, gin byproducts; cotton, undelinted seed; fruit, citrus, group 10–10; fruit, pome, group 11–10; fruit, stone, group 12–12; nut, tree, group 14–12; plum, prune; soybean, aspirated fractions; soybean, forage; soybean, hay; soybean, seed; vegetable, *Brassica,* head and stem group 5–13; vegetable, cucurbit, group 9; vegetable, fruiting, group 8–10; vegetable, leaf petioles, subgroup 22B; vegetable, leafy, subgroup 4–13A; vegetable leafy, subgroup 4–13B; and vegetable, tuberous and corm, subgroup 1C. *Contact:* Carmen Rodia (703) 306–0327; email: *rodia.carmen@epa.gov.*

5. *File number:* 7969–GOG (Ventigra Insecticide; Decision No. 516386). *Docket number:* EPA–HQ–OPP–2016–0416. *Company name and address:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528. *Active ingredient:* Afidopyropen. *Proposed uses:* Almond hulls; apple, wet pomace; citrus oil; cotton, gin byproducts; cotton, undelinted seed; fruit, citrus, group 10–10; fruit, pome, group 11–10; fruit, stone, group 12–12; nut, tree, group 14–12; plum, prune; soybean, aspirated fractions; soybean, forage; soybean, hay; soybean, seed; vegetable, *Brassica,* head and stem group 5–13; vegetable, cucurbit, group 9; vegetable, fruiting, group 8–10; vegetable, leaf petioles, subgroup 22B; vegetable, leafy, subgroup 4–13A; vegetable leafy, subgroup 4–13B; and vegetable, tuberous and corm, subgroup 1C. *Contact:* Carmen Rodia (703) 306–0327; email: *rodia.carmen@epa.gov.*

6. *File number:* 42750–GRR (Hexythiazox 1E; Decision No. 517092). *Docket number:* EPA–HQ–OPP–2015–0339. *Company name and address:* Albraugh, LLC, P.O. Box 2127, Valdosta, GA 31604–2127. *Active ingredient:* Hexythiazox. *Proposed uses:* Alfalfa (West of the Rockies); beans, dry and succulent (Western United States only); citrus (CA, AZ and TX only); corn, field; corn, sweet (including ears and forage) (Western United States only); cotton (CA, AZ and TX only); Christmas tree, Christmas tree plantations; greenhouse tomatoes; non-bearing tree fruits and nuts, citrus, and vines (field grown and nursery); pepper/eggplant subgroup 8–10B; pome fruit group 11–10; potatoes (OR, WA and ID only); small fruit, vine climbing subgroup, except fuzzy kiwifruit 13–07F; sorghum (Western United States only, including OK and TX); stone fruits group, including plum; timothy (West of the Rockies); and tree nuts group and pistachios. *Contact:* Carmen Rodia (703) 306–0327; email: *rodia.carmen@epa.gov.*

7. *File number:* 42750–GRE (Hexythiazox Technical; Decision No. 517095–2). *Docket number:* EPA–HQ–OPP–2015–0339. *Company name and address:* Albraugh, LLC, P.O. Box 2127, Valdosta, GA 31604–2127. *Active ingredient:* Hexythiazox. *Proposed uses:* Alfalfa (West of the Rockies); beans, dry and succulent (Western United States only); citrus (CA, AZ and TX only); corn, field; corn, sweet (including ears and forage) (Western United States only); cotton (CA, AZ and TX only); Christmas tree, Christmas tree plantations; greenhouse tomatoes; non-bearing tree fruits and nuts, citrus, and vines (field grown and nursery); pepper/eggplant subgroup 8–10B; pome fruit group 11–10; potatoes (OR, WA, and ID only); small fruit, vine climbing subgroup, except fuzzy kiwifruit 13–07F; sorghum (Western United States only, including OK and TX); stone fruits group, including plum; timothy (West of the Rockies); and tree nuts group and pistachios. *Contact:* Katelynn King (703) 347–0193; email: *king.katelynn@epa.gov.*

8. *File number:* 91234–RO (A103.02; Decision No. 518428). *Docket number:* EPA–HQ–OPP–2016–0452. *Company name and address:* Atticus, LLC., c/o Pyxis Regulatory Consulting, Inc., 4110 136th Street, Gig Harbor, WA 98332. *Active ingredient:* Chlorfenapyr. *Proposed uses:* Fruiting vegetables and ornamental crops grown in commercial greenhouses. *Contact:* Carmen Rodi (703) 306–0327; email: *rodia.carmen@epa.gov.*

B. Addition of New Food Uses on Previously Registered Pesticide Products

1. *Registration number:* 71512–7 (Technical Flonicamid Insecticide; Decision No. 513683). *Docket number:* EPA–HQ–OPP–2011–0985. *Company name and address:* ISK Bioscience Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active ingredient:* Flonicamid. *Proposed uses:* Citrus. *Contact:* Carmen Rodia (703) 306–0327; email: *rodia.carmen@epa.gov.*

2. *Registration number:* 71512–9 (Flonicamid 50WG; Decision No. 513688). *Docket number:* EPA–HQ–OPP–2011–0985. *Company name and address:* ISK Bioscience Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active ingredient:* Flonicamid. *Proposed use:* Citrus. *Contact:* Carmen Rodia (703) 306–0327; email: *rodia.carmen@epa.gov.*

3. *Registration number:* 71512–10 (Beleaf 50SG Insecticide; Decision No. 513685). *Docket number:* EPA–HQ–OPP–2011–0985. *Company name and address:* ISK Bioscience Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active ingredient:* Flonicamid. *Proposed use:* Citrus. *Contact:* Carmen Rodia (703) 306–0327; email: *rodia.carmen@epa.gov.*

4. *Registration number:* 71512–14 (Flonicamid 50WG for Manufacturing and Repacking Use Only; Decision No. 513684). *Docket number:* EPA–HQ–OPP–2011–0985. *Company name and address:* ISK Bioscience Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. *Active ingredient:* Flonicamid. *Proposed use:* Citrus. *Contact:* Carmen Rodia (703) 306–0327; email: *rodia.carmen@epa.gov.*

5. *Pesticide Petition:* 6E8466 (Decision No. 516183). *Docket number:* EPA–HQ–OPP–2016–0029. *Company name and address:* Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. *Active ingredient:* Fenazaquin. *Proposed use:* Import tolerance on tea and pineapple. *Contact:* Carmen Rodia (703) 306–0327; email: *rodia.carmen@epa.gov.*

6. *Pesticide Petition:* 6E8463 (Decision No. 515700). *Docket number:* EPA–HQ–OPP–2007–0099. *Company name and address:* Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808–2951. *Active ingredient:* Flubendiamide. *Proposed use:* Import tolerance on dried tea. *Contact:* Carmen Rodia (703) 306–0327; email: *rodia.carmen@epa.gov.*

7. *Registration number:* 10163–277 (Onager Miticide). *Docket number:* EPA–HQ–OPP–2015–0038. *Company name and address:* Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. *Active ingredient:* Hexythiazox. *Proposed use:* Hops. *Contact:* Katelynn King (703) 347–0193; email: *king.katelynn@epa.gov.*

8. *Registration number:* 10163–337 (Onager EW). *Docket number:* EPA–HQ–OPP–2015–0038. *Company name and address:* Gowan Company, P.O. Box 5569, Yuma, AZ 85366–5569. *Active ingredient:* Hexythiazox. *Proposed use:* Hops. *Contact:* Katelynn King (703) 347–0193; email: *king.katelynn@epa.gov.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 10, 2016.

Michael Goodis, Acting,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–19758 Filed 8–17–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9950–79–Region 1]

Notice of Availability of Draft NPDES General Permits for Remediation Activity Discharges in Massachusetts and New Hampshire: The Remediation General Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability of DRAFT NPDES General Permits MAG910000 and NHG910000.

SUMMARY: The Director of the Office of Ecosystem Protection, U.S. Environmental Protection Agency—Region 1 (EPA), is providing a notice of availability of draft National Pollutant Discharge Elimination System (NPDES) general permits for discharges from sites engaged in certain remediation activities to certain waters of the Commonwealth of Massachusetts and the State of New Hampshire. The draft NPDES general permits establish Notice of Intent (NOI), Notice of Change (NOC), and Notice of Termination (NOT) requirements, effluent limitations and requirements, standard and special conditions and best management practice (BMP) requirements for sites that discharge 1.0 million gallons per day or less in Massachusetts and New Hampshire. These general permits replace the Remediation General Permit (RGP) that expired on September 9, 2015.

DATES: Comment on the draft general permits must be received on or before September 19, 2016.

Public Hearing Information: EPA will hold a public hearing, if necessary, in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to provide written and/or oral comments for the official administrative record.

ADDRESSES: Comments on the draft RGP shall be submitted by one of the following methods: (1) Email: *little.shauna@epa.gov;* or (2) Mail: U.S. EPA Region 1, Attn: Shauna Little, 5 Post Office Square, Suite 100, Mail Code OEP06–4, Boston, MA 02109–3912. No facsimiles (faxes) will be accepted.

The draft RGP is based on an administrative record available for public review at EPA–Region 1, Office of Ecosystem Protection, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912. A reasonable fee may be charged for copying requests. The fact sheet for the draft RGP sets forth principal facts and the significant factual, legal, methodological and policy questions considered in the development of the draft general permit and is available upon request. A brief summary is provided as supplementary information below.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft general permits may be obtained between the hours of 9 a.m. and 5 p.m. Monday through Friday, excluding holidays, from Shauna Little, U.S. EPA Region 1, 5 Post Office Square, Suite 100, Mail Code OEP06–4, Boston, MA 02109–3912.; telephone: 617–918–1989; email: *little.shauna@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information: EPA is proposing to reissue two general permits for discharges from sites engaged in remediation activities from eight general categories: (1) Petroleum-related site remediation; (2) Non-petroleum-related site remediation; (3) Contaminated/formerly contaminated site dewatering; (4) Pipeline and tank dewatering; (5) Aquifer pump testing; (6) Well development/rehabilitation; (7) Dewatering/remediation of collection structures; and (8) Dredge-related dewatering. While the draft general permits are two distinct permits, for convenience, EPA has grouped them together in a single document and has provided a single fact sheet. This document refers to the draft general "permit" in the singular. The draft general permit, appendices and fact sheet are available at: *http://www.epa.gov/region1/npdes/rgp.html.* The draft general permit includes effluent limitations and requirements based on technology-based considerations, best professional judgment (BPJ), and water quality considerations. The effluent limits established in the draft general permit assure that the surface water quality standards of the receiving water(s) are attained and/or maintained. The permit also contains BMP requirements in order to ensure EPA has the information necessary to ensure compliance and to ensure discharges meet water quality standards.

Obtaining Authorization: In order to obtain authorization to discharge, operators must submit a complete and accurate NOI containing the information in Appendix IV—Part 1 of the draft general permit. Operators with existing discharges must submit a NOI within 90 days of the effective date of the final general permit. Operators with new discharges must submit a NOI at least 30 days prior to initiating discharges and following the effective date of the final general permit. The effective date of the final general permit will be specified in the **Federal Register** publication of the Notice of Availability of the final permit. Operators must meet the eligibility requirements of the general permit prior to submission of a NOI. An operator will be authorized to discharge under the general permit upon receipt of written notice from EPA following EPA's web posting of the submitted NOI. EPA will authorize the discharge, request additional information, or require the operator to apply for an alternative permit or an individual permit.

Other Legal Requirements:

Endangered Species Act (ESA): EPA has updated the provisions and necessary actions and documentation related to potential impacts to endangered species from facilities seeking coverage under the RGP. EPA has requested concurrence from the appropriate federal services (U.S. Fish and Wildlife Service and National Marine Fisheries Service) in connection with this draft general permit.

National Historic Preservation Act (NHPA): In accordance with NHPA, EPA has established provisions and documentation requirements for sites seeking coverage under the RGP to ensure that discharges or actions taken under this general permit will not adversely affect historic properties and places.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: August 9, 2016.

H. Curtis Spalding,

Regional Administrator.

[FR Doc. 2016–19541 Filed 8–17–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2016–0422; FRL–9949–85]

Lambda-Cyhalothrin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Washington State Department of Agriculture to use the pesticide lambda-cyhalothrin (CAS

No. 91465–08–6) on asparagus to control the European asparagus aphid. The applicant proposes a use which is supported by the Interregional Research program (IR–4) and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before September 2, 2016.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2016–0422, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a federal or state agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Washington State Department of Agriculture has requested the EPA Administrator to issue a specific exemption for the use of lambda-cyhalothrin on asparagus to control the European asparagus aphid. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The applicant's submission which provides an explanation of the need for the exemption as well as the proposed use pattern can be found at *http://www.regulations.gov* in their section 18 emergency exemption request for use of lambda-cyhalothrin on asparagus to control the European asparagus aphid.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing a use which is supported by the IR–4 program and has been requested in 5 or more previous years, and a petition for tolerance has not yet been submitted to the Agency.

The notice provides an opportunity for public comment on the application. The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Washington State Department of Agriculture.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 10, 2016.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–19781 Filed 8–17–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0022; FRL–9949–74]

Pesticide Product Registrations; Receipt of Applications for New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

DATES: Comments must be received on or before September 19, 2016.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the File Symbol or Registration Number of interest as shown in the body of this document by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov;* or Michael Goodis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

1. *EPA Registration Numbers:* 264–1049, 264–1050, 264–1065. *Docket ID number:* EPA–HQ–OPP–OPP–2016–0255. *Applicant:* Bayer CropScience, P.O. Box 12014, Research Triangle Park, North Carolina 27709. *Active ingredient:* Spirotetramat. *Product type:* Insecticide. *Proposed use:* Carrot. *Contact:* RD.

2. *EPA Registration Numbers:* 264–1049, 264–1050, 264–1051, 264–1065. *Docket ID number:* EPA–HQ–OPP–OPP–2016–0255. *Applicant:* Bayer CropScience, P.O. Box 12014, Research Triangle Park, North Carolina 27709. *Active ingredient:* Spirotetramat. *Product type:* Insecticide. *Proposed uses:* Sugar beet, bushberry subgroup low growing berry (crop subgroups 13–07B and 13–07H). *Contact:* RD.

3. *EPA Registration Number:* 2724–804. *Docket ID number:* EPA–HQ–OPP–2016–0342. *Applicant:* Wellmark International; 1501 E. Woodfield Road, Suite 200 West; Schaumburg, IL 60173. *Active ingredient:* Piperonyl butoxide. *Product type:* Insecticide. *Proposed use:* Fungi, edible, group 21. *Contact:* RD.

4. *EPA Registration Numbers:* 42750–85 and 42750–169. *Docket ID number:* EPA–HQ–OPP–2016–0384. *Applicant:* Albaugh, LLC, P.O. Box 2127, Valdosta, GA 31604. *Active ingredient:* Quinclorac. *Product type:* Herbicide. *Proposed uses:* Bushberries, caneberries, and asparagus. *Contact:* RD.

5. *EPA Registration Number:* 89459–19. *Docket ID number:* EPA–HQ–OPP–2016–0342. *Applicant:* Central Garden and Pet Company; 1501 East Woodfield Road, Suite 200W; Schaumburg, IL 60173. *Active ingredient:* Piperonyl butoxide. *Product type:* Insecticide. *Proposed use:* Fungi, edible, group 21. *Contact:* RD.

6. *File Symbol:* 6218–IT. *Docket ID number:* EPA–HQ–OPP–2016–0165. *Applicant:* Summit Chemical Co., 235 S. Kresson St., Baltimore, MD 21224–2616. *Active ingredient: Bacillus thuringiensis* subspecies *israelensis* strain SUM–6218. *Product type:* Insecticide. *Proposed use:* To control mosquito larvae outdoors, indoors, and in residential areas and psychodid fly larvae in wastewater treatment plants. *Contact:* BPPD.

7. *File Symbol:* 7173–GNL. *Docket ID number:* EPA–HQ–OPP–2016–0420. *Applicant:* Liphatech, 3600 West Elm St., Milwaukee, WI 53209. *Active ingredient:* Chlorophacinone. *Product type:* Rodenticide. *Proposed use:* California ground squirrels. *Contact:* RD.

8. *File Symbol:* 42750–GRG. *Docket ID number:* EPA–HQ–OPP–2016–0360. *Applicant:* Albaugh, LLC, P.O. Box 2127, Valdosta, GA 31604. *Active ingredient:* quizalofop-P-ethyl. *Product type:* Herbicide. *Proposed use:* Herbicide-tolerant wheat. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: August 10, 2016.

Michael Goodis,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2016–19759 Filed 8–17–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9950–23-Region 4]

Notice of Draft National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (GEG460000); Availability of Draft Environmental Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Reissuance of NPDES General Permit, Notice to States of Mississippi, Alabama and Florida for Consistency Review with approved Coastal Management Programs.

SUMMARY: The Regional Administrator of EPA Region 4 (the "Region") is today proposing to reissue the National

Pollutant Discharge Elimination System (NPDES) general permit for the Outer Continental Shelf (OCS) of the Gulf of Mexico (General Permit No. GEG460000) for discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category. The draft permit pertains to discharges from exploration, development, and production facilities located in and discharging, to all Federal waters of the eastern portion of the Gulf of Mexico seaward of the outer boundary of the territorial seas, and covers existing and new source facilities with operations located on Federal leases occurring in water depths seaward of 200 meters, occurring offshore the coasts of Alabama and Florida. The western boundary of the coverage area is demarcated by Mobile and Visoca Knoll lease blocks located seaward of the outer boundary of the territorial seas from the coasts of Mississippi and Alabama. Individual permits will be issued for operating facilities on lease blocks traversed by and shoreward of the 200 meter water depth.

As proposed, this Draft NPDES general permit includes, best conventional pollutant control technology (BCT), and best available technology economically achievable (BAT) limitations for existing sources and new source performance standards (NSPS) limitations for new sources as promulgated in the effluent guidelines for the offshore subcategory. The draft permit also includes the following changes to the expired permit: (1) New electronic reporting requirements; (2) new whole effluent toxicity testing sampling and reporting requirements for well treatment, completion, and workover fluids not discharged with produced wastewaters; (3) requirements to submit additional information pertaining to the chemicals and additives used in well treatment, completion and workover operations; and (4) clarification regarding types of operators. Region 4 is also making available a Draft Environmental Assessment (EA) for review during the 30 day public comment period for this general permit. The Draft EA addresses potential impacts from proposed changes to the general permit, and it considers recent technical studies.

DATES: Comments must be received by September 17, 2016.

ADDRESSES: The Draft NPDES general permit, permit fact sheet, Draft EA and other relevant documents are on file and may be inspected any time between 8:15 a.m. and 4:30 p.m., Monday through Friday at the address shown below. Copies of the Draft NPDES general permit, permit fact sheet, Draft EA and other relevant documents may be obtained by writing the U.S. EPA-Region 4, Water Protection Division (WPD), NPDES Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960, Attention: Ms. Bridget Staples, or by calling (404) 562–9783. Alternatively, copies of the Draft NPDES general permit, permit fact sheet, Draft EA, Essential Fish Habitat Determination and preliminary Ocean Discharge Criteria Evaluation may be downloaded at: *http://www.epa.gov/aboutepa/about-epa-region-4-southeast.* Submit comments to the WPD, U.S. EPA-Region 4, NPDES Permitting Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303–8960, Attention: Ms. Bridget Staples.

FOR FURTHER INFORMATION CONTACT: Ms. Bridget Staples, EPA Region 4, WPD, NPDES Section, by mail at the Atlanta address given above, by telephone at (404) 562–9783 or by email at *Staples.Bridget@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Procedures for Reaching a Final Permit Decision

Pursuant to 40 CFR 124.13, any person who believes any condition of the permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments in full, supporting their position, by the close of the comment period. All comments on the Draft NPDES general permit and the Draft EA received within the 30-day comment period will be considered in the formulation of final determination regarding the National Environmental Policy Act (NEPA) review and the permit reissuance. After consideration of all written comments and the requirements and policies in the CWA and appropriate regulations, the EPA Regional Administrator will make a determination regarding the Final EA, Finding of No Significant Impact, and permit reissuance. If the determination results in a permit that is substantially unchanged from the draft permit announced by this notice, the Regional Administrator will so notify all persons submitting written comments. If the determination results in a permit that is substantially changed, the Regional Administrator will issue a public notice indicating the revised determination.

A formal hearing is available to challenge any NPDES permit issued according to the regulations at 40 CFR 124.15 and 124.19, except for a general permit, as provided at 40 CFR 124.19(o). Persons affected by a general permit may not challenge the conditions of a general permit as a right in further Agency proceedings. They may instead either challenge the general permit in court, or apply for an individual permit as authorized at 40 CFR 122.28, in accordance with the application requirements set forth at 40 CFR 122.21, and then request a formal hearing on the issuance or denial of an individual permit. Additional information regarding these procedures is available by contacting Mr. Paul Schwartz, Associate Regional Counsel, Office of Regional Counsel, at (404) 562–9576.

II. Procedures for Obtaining General Permit Coverage

Notice of Intent requirements for obtaining coverage for operating facilities are stated in Part I Section A.4 of the general permit. Coverage under the reissued general permit is effective upon receipt of notification of coverage with an assignment of an NPDES general permit number from the EPA-Region 4, Director of the Water Protection Division. EPA will act on the Notice of Intent (NOI) within a reasonable period of time.

III. Exclusion of Non-Operational Leases

This permit does not apply to non-operational leases, *i.e.,* those on which no discharge has taken place in the two (2) years prior to the effective date of the reissued general permit. EPA will not initially accept NOIs for such leases, and the general permit will not cover such leases, except as set forth below. Non-operational leases will lose coverage under the previous general permit on the effective date of the reissued general permit. No subsequent exploration, development or production activities may take place on these leases until and unless the lessee has obtained coverage under the new general permit or an individual permit. EPA will not accept an NOI or individual permit application for non-operational or new acquired leases until such time as an Exploration Plan Document or the Development Operations Coordination Document has been prepared and submitted to Bureau of Energy Management.

IV. State Water Quality Certification

Because state waters are not included in the area covered by the OCS general permit, its effluent limitations and monitoring requirements are not subject to state water quality certification under CWA Section 401. However, the states of Alabama, Florida and Mississippi have been provided a copy of this draft general permit, Draft EA to review and submit comments. Copies of these documents have also been provided to EPA Headquarters for their review.

V. State Consistency Determination

This Notice will also serve as Region 4's requirement under the Coastal Zone Management Act (CZMA) to provide all necessary information for the States of Mississippi, Alabama and Florida to review this action for consistency with their approved Coastal Zone Management Programs. A copy of the consistency determination on the proposed activities is being sent to each affected State, along with a letter including this FR notice, which provides the EPA Web site where electronic copies can be obtained of the Draft NPDES general permit, permit fact sheet, preliminary Ocean Discharge Criteria Evaluation, and Draft EA. Other relevant information for their review is available upon request from each State. Comments regarding State Consistency are invited in writing within 30 days of this notice to the WPD, U.S. EPA-Region 4, NPDES Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303–8960, Attention: Ms. Bridget Staples.

VI. Public Comment Period and Public Hearings

The public comment period for the Draft NPDES permit, Draft EA will begin on the date of publication of this notice in the **Federal Register** and end 30 calendar days later.

VII. Administrative Record

The Draft NPDES general permit, permit fact sheet, Draft EA and other relevant documents are on file and may be inspected any time between 8:15 a.m. and 4:30 p.m., Monday through Friday at the address shown below. Copies of the Draft NPDES general permit, permit fact sheet, Draft EA and other relevant documents may be obtained by writing the U.S. EPA-Region 4, WPD, NPDES Permitting Section, Sam Nunn Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303–8960, Attention: Ms. Bridget Staples, or by calling (404) 562–9783. Alternatively, copies of the Draft NPDES general permit, permit fact sheet, Draft EA, Essential Fish Habitat Determination and preliminary Ocean Discharge Criteria Evaluation may be downloaded at: *http://www.epa.gov/aboutepa/about-epa-region-4-southeast.*

VIII. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has exempted review of NPDES general permits under the terms of Executive Order 12866.

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rule making requirements under the Administrative Procedures Act (APA) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

Issuance of an NPDES general permit is not subject to rule making requirements, including the requirement for a general notice of proposed rule making, under APA Section 533 or any other law, and is thus not subject to the RFA requirements.

The APA defines two broad, mutually exclusive categories of agency action—''rules'' and ''orders.'' APA Section 551(4) defines rule as ''an agency statement of general or particular applicability and future effect designed to implement, interpret or prescribe law or policy or describing the organization, procedure, or practice or requirements of an agency . . . '' APA Section 551(6) defines orders as ''a final disposition . . . of an agency in a matter other than rule making but including licensing.'' APA Section 551(8) defines ''license'' to ''include . . . an agency permit . . . '' The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes ''rule making'' requirements. APA Section 551(5) defines ''rule making'' as ''the agency process for formulating, amending, or repealing a rule.'' By its terms, Section 553 applies only to rules and not to orders, exempting by definition permits.

X. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their ''regulatory actions'' to refer to regulations. (See, *e.g.,* UMRA Section 401, ''Each agency shall . . . assess the effects of Federal regulatory actions . . . (other than to the extent that such regulations incorporate requirements specifically set forth in law).'') UMRA Section 102 defines ''regulation'' by reference to 2 U.S.C. 658 which in turn defines ''regulation'' and ''rule'' by reference to Section 601(2) of the RFA. That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rule making pursuant to Section 553(b) of the APA, or any other law.''

As discussed in the RFA section of this notice, NPDES general permits are not ''rules'' by definition under the APA and thus not subject to the APA requirement to publish a notice of proposed rule making. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA Section 402(a) requirement to provide an opportunity for a hearing. Therefore, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

XI. Paperwork Reduction Act

The information collection required by this permit has been approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 [(NPDES Discharge Monitoring Reports (DMRs)].

Because this permit is very similar in reporting and application requirements and in discharges which are required to be monitored as the previous Eastern Gulf of Mexico OCS general permit (GEG460000), the paperwork burdens are expected to be nearly identical. When it issued the previous OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare DMRs. It is estimated that the time required to prepare the request for coverage and DMRs for the reissued permit will be approximately the same.

Dated: July 27, 2016.

James D. Giattina,

Director, Water Protection Division.

[FR Doc. 2016–19099 Filed 8–17–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0936]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before September 19, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments Nicholas A. Fraser, OMB, via email: *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0936.

Title: Sections 95.1215, 95.1217, 95.1223 and 95.1225, Medical Device Radiocommunications Service (MedRadio).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 3,120 respondents; 3,120 responses.

Estimated Time per Response: 1–3 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151 and 303 of the Communications Act of 1934, as amended.

Total Annual Burden: 9,120 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Federal Communications Commission is requesting that the Office of Management and Budget (OMB) approve for a period of three years an extension for the information collection requirements contained in this collection.

The information collection requirements that are approved under this information collection are contained in 47 CFR 95.1225(b) and (c), 95.1217(a)(3) and (c), 95.1223 and 95.1225 which relate to the Medical Device Radiocommunication Service (MedRadio).

The information is necessary to allow the coordinator and parties using the database to contact other users to verify information and resolve potential conflicts. Each user is responsible for determining in advance whether new devices are likely to cause or be susceptible to interference from devices already registered in the coordination database.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–19741 Filed 8–17–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 16–720]

Order Declares JuBe Communications, LLC's International Section 214 Authorization Terminated

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the International Bureau of the Federal Communications Commission (Commission) declares the international Section 214 authorization granted to JuBe Communications, LLC (JuBe) terminated given JuBe's inability to comply with the express condition for holding the authorization. It also concludes that JuBe failed to comply with those requirements of the Communications Act of 1934, as amended (the Act) and the Commission's rules that ensure that the Commission can contact and communicate with the authorization holder and verify JuBe is still providing service, which failures have prevented any way of addressing JuBe's inability to comply with the condition of its authorization.

FOR FURTHER INFORMATION CONTACT: Cara Grayer, Telecommunications and Analysis Division, International Bureau at (202) 418–2960 or *Cara.Grayer@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 16–720, adopted and released July 1, 2016.

Background

Section 214(a) of the Act prohibits any carrier from constructing, extending, acquiring, or operating any line, and from engaging in transmission through any such line, without first obtaining a certificate of authorization from the Commission. Under Section 214(c) of the Act, the Commission "may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require." On July 27, 2007, the International Bureau granted JuBe an international Section 214 authorization to provide global or limited global facility-based service and global or limited global resale service in accordance with Section 63.18(e)(1) and 63.18(e)(2) of the Commission's rules. The International Bureau granted the application on the express condition that JuBe abide by the commitments and undertakings contained in its Letter of Assurance (LOA) to the Department of Justice (DOJ), the Federal Bureau of Investigation, and the U.S. Department of Homeland Security (collectively, the Executive Branch Agencies) dated July 12, 2007. The LOA outlines a number of commitments made by JuBe to address national security, law enforcement, and public safety concerns.

On December 23, 2015, the Executive Branch Agencies notified the Commission of JuBe's non-compliance with the conditions of its authorization and requested that the Commission terminate, and declare null and void and no longer in effect, the international Section 214 authorization issued to JuBe. The Executive Branch Agencies believe that JuBe is no longer in existence. Specifically, according to the Texas state corporate Web site, JuBe voluntarily dissolved as a corporate entity and became inactive on October 14, 2010. Further, on October 19, 2015, Mr. Thomas Lynch, JuBe's designated point of contact during the application process, advised the Executive Branch Agencies that he had been unable to reach JuBe after multiple attempts through all his contacts except U.S. postal service. He noted that he presumed JuBe to be out of business. Based on this, the Executive Branch Agencies state that "JuBe is neither providing services pursuant to authorization file number ITC–214–20070607–00218 nor still in existence."

The Commission has made significant efforts to communicate with JuBe, but has also been unable to do so. On January 19, 2016, the International Bureau sent JuBe a letter to the last addresses of record requesting that JuBe respond to the December 23, 2015 Executive Branch letter within 30 days of the letter, by February 18, 2016. JuBe did not respond. Since that time, the International Bureau has provided JuBe with additional opportunities to respond to these allegations. The International Bureau stated that failure to respond would result in termination of JuBe's international Section 214 authorization for failure to comply with conditions of its authorization. In JuBe's 2007 application, JuBe stated it was incorporated in Texas, and according to the Texas Secretary of State Web site, no records exist for JuBe Communications, LLC. To date, JuBe has not responded to any of the International Bureau or the Executive Branch Agencies' multiple requests to resolve this matter.

Discussion

We determine that JuBe's international Section 214 authorization to provide international services issued under File No. ITC–214–20070607–00218 has terminated for inability to comply with an express condition for holding the international Section 214 authorization. The International Bureau has provided JuBe with notice and opportunity to respond to the allegations in the December 23, 2015 Executive Branch letter concerning JuBe's non-compliance with the condition of the grant. JuBe has not responded to any of our multiple requests or requests from the Executive Branch Agencies. We find that JuBe's failure to respond to our multiple requests demonstrates that it is unable to satisfy the LOA conditions, upon which the Executive Branch Agencies gave their non-objection to the grant of the authorization to JuBe, and which are a condition of the grant of its international Section 214 authorization.

Furthermore, after having received an international Section 214 authorization, a carrier "is responsible for the continuing accuracy of the certifications made in its application" and must promptly correct information no longer accurate, "and in any event, within thirty (30) days." JuBe has failed to inform the Commission of any changes in its business status of providing international telecommunications services, as required by the rules. In addition, there is no indication that JuBe is currently providing service pursuant to its international Section 214 authorization. If JuBe has discontinued service, it is also in violation of the Commission's rules requiring prior notification for such a discontinuance. Nor is there any record of JuBe having complied with Section 413 of the Act and the Commission's rules requiring it to designate an agent for service after receiving its authorization on July 27, 2007. Finally, as part of its authorization, JuBe "must file annual international telecommunications traffic and revenue as required by § 43.62." Section 43.62(b) of the Commission's rule states that "[n]ot later than July 31 of each year, each person or entity that holds an authorization pursuant to section 214 to provide international telecommunications service shall report whether it provided international telecommunications services during the preceding calendar year." Commission records indicate that JuBe failed to file an annual international telecommunications traffic and revenue report indicating whether or not JuBe provided services in 2015, as required by Section 43.62(b). In these circumstances, and in light of JuBe's failure to respond to the Commission's rules designed to ensure its ability to communicate with the holder of the authorization, termination also is warranted wholly apart from demonstrating JuBe's inability to satisfy the LOA conditions of its authorization.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to Sections 4(i), 214, and 413 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 214, 413, and Sections 1.47(h), 43.62, 63.18, 63.21, 63.22(h), 63.23(e), and 64.1195 of the Commission's rules, 47 CFR 1.47(h), 43.62, 63.18, 63.21, 63.22(h), 63.23(e), 64.1195, that the international 214 authorization issued under File No. ITC–214–20070607–00218 is *hereby terminated and declared null and void.*

It is further ordered that the request of the U.S. Department of Justice, the Federal Bureau of Investigation, and the U.S. Department of Homeland Security, is hereby granted, to the extent set forth in this Order.

It is further ordered that a copy of this Order shall be sent by return receipt requested to JuBe Communications, LLC at its last known addresses.

It is further ordered that a copy of this Order, or a summary thereof, shall be published in the **Federal Register**.

This Order is issued on delegated authority under 47 CFR 0.51, 0.261, and is effective upon release. Petitions for reconsideration under Section 1.106 of the Commission's rules, 47 CFR 1.106, or applications for review under Section 1.115 of the Commission's rules, 47 CFR 1.115, may be filed within 30 days of the date of the release of this Order.

Federal Communications Commission.

Denise Coca,

Chief, Telecommunications and Analysis Division, International Bureau.

[FR Doc. 2016–19690 Filed 8–17–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[3060–0986]

Information Collection Being Submitted for Emergency Review and Approval to the Office of Management and Budget

AGENCY: Federal Communication Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its

continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning: Whether the proposed collection(s) of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection(s) of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) Control Number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB Control Number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 19, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email at *Nicholas_A._Fraser@omb.eop.gov*. Also, please submit your PRA comments to the FCC by email at *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Nicole Ongele, Office of the Managing Director, FCC at (202) 418–2991.

SUPPLEMENTARY INFORMATION: The Commission is requesting that OMB approve this revised information collection under the emergency processing provisions of the PRA, 5 CFR 1320.13.

OMB Control Number: 3060–0986.

Title: High-Cost Universal Service Support.

Form Number: FCC Form 481, FCC Form 505, FCC Form 507, FCC Form 508, FCC Form 509, and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 1,977 respondents; 14,109 responses.

Estimated Time per Response: .5 hours to 100 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 274,455 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

Nature and Extent of Confidentiality: We note that USAC must preserve the confidentiality of all data obtained from respondents; must not use the data except for purposes of administering the universal service programs; and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: The Federal Communications Commission seeks emergency processing under the Paperwork Reduction Act (PRA), 5 CFR 1320.13. The Commission is requesting OMB approval for this revised information collection. In November 2011, the Commission adopted an order reforming its high-cost universal service support mechanisms. Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund, WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*); and the Commission and Wireline Competition Bureau have since adopted a number of orders that implement the *USF/ICC Transformation Order;* see also Connect America Fund et al., WC Docket No. 10–90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (2012); Connect America Fund et al., WC Docket No. 10–90 et al., Order, 27 FCC Rcd 605 (Wireline Comp. Bur. 2012); Connect America Fund et al., WC Docket No. 10–90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549 (2012); Connect America Fund et al., WC Docket No. 10–90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); Connect America Fund et al., WC Docket No. 10–90 et al., Order, 28 FCC Rcd 7227 (Wireline Comp. Bur. 2013); Connect America Fund, WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7766 (Wireline Comp. Bur. 2013); Connect America Fund, WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013); Connect America Fund, WC Docket No. 10–90, Report and Order, 28 FCC Rcd 10488 (Wireline Comp. Bur. 2013); Connect America Fund et al., WC Docket No. 10–90 et al., Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769 (2014); Connect America Fund et al., WC Docket No. 10–90 et al., Report and Order, 29 FCC Rcd 15644 (2014); Modernizing the E-rate Program for Schools and Libraries et al., WC Docket No. 13–184 et al., Second Report and Order and Order on Reconsideration, 29 FCC Rcd 15538 (2014). The Commission has received OMB approval for most of the information collections required by these orders. At a later date the Commission plans to submit additional revisions for OMB review to address other reforms adopted in the orders (*e.g.,* 47 CFR 54.313(a)(11)).

In March 2016, the Commission adopted the *Rate-of-Return Reform Order* to continue modernizing the universal service support mechanisms for rate-of-return carriers. *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016). The *Rate-of-Return Reform Order* replaces the Interstate Common Line Support (ICLS) mechanism with the Connect America Fund—Broadband Loop Support (CAF–BLS) mechanism. While ICLS supported only lines used to provide traditional voice service (including voice service bundled with broadband service), CAF–BLS also supports consumer broadband-only loops.

Here, we propose to revise this information collection, specifically FCC Form 507, FCC Form 508, and FCC Form 509, to include additional line count, forecasted cost and revenue, and actual cost and revenue data associated with consumer broadband-only loops necessary for the calculation of CAF–BLS. This revision is a narrow expansion of similar information related to common line loops, costs, and revenues collected pursuant to the existing approval.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–19744 Filed 8–17–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC or Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) V will hold its sixth meeting.

DATES: September 14, 2016.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal Officer, (202) 418–1096 (voice) or *jeffery.goldthorp@fcc.gov* (email); or Suzon Cameron, Deputy Designated Federal Officer, (202) 418–1916 (voice) or *suzon.cameron@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: The meeting will be held on September 14, 2016, from 1:00 p.m. to 5:00 p.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street SW., Washington, DC 20554.

The CSRIC is a Federal Advisory Committee that will provide recommendations to the FCC regarding best practices and actions the FCC can take to help ensure the security, reliability, and interoperability of communications systems. On March 19, 2015, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for the CSRIC for a period of two years through March 18, 2017. The meeting on September 14, 2016, will be the sixth meeting of the CSRIC under the current charter. The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Jeffery Goldthorp, CSRIC Designated Federal Officer, by email to *jeffery.goldthorp@fcc.gov* or U.S. Postal Service Mail to Jeffery Goldthorp, Associate Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW., Room 7–A325, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2016–19684 Filed 8–17–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, August 16, 2016, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision and resolution activities.

In calling the meeting, the Board determined, on motion of Director Richard Cordray (Director, Consumer Financial Protection Bureau), seconded by Vice Chairman Thomas M. Hoenig, concurred in by Director Thomas J. Curry (Comptroller of the Currency) and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B).

Dated: August 16, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–19824 Filed 8–16–16; 4:15 pm]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 2016.

A. Federal Reserve Bank of St. Louis (David L. Hubbard, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to *Comments.applications@stls.frb.org:*

1. *South Central Bancshares of Kentucky, Inc.,* Glasgow, Kentucky; to merge with Kentucky National Bancorp, Inc., Elizabethtown, Kentucky, and thereby indirectly acquire Kentucky

Neighborhood Bank, Elizabethtown, Kentucky.

Board of Governors of the Federal Reserve System, August 15, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–19736 Filed 8–17–16; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 6, 2016.

A Federal Reserve Bank of Dallas (Robert L. Triplett III, Senior Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Edward B. Tomlinson, II, Rowlett, Texas, individually and as Voting Person under a Voting Agreement dated November 1, 2013 (the "Voting Agreement"), Charles S. Leis, Eagle, Idaho, individually and as Voting Person under the Voting Agreement, and the following parties to the Voting Agreement which constitutes a group of persons acting in concert: The Revocable Trust of Dorvin D. Leis, Kahului, Hawaii, Samuel S. Aguirre Revocable Living Trust, Alea, Hawaii, Paul R. Botts Revocable Living Trust, Kailua, Hawaii, James F. Bowen, Rockwall, Texas, H. Grady Chandler, Garland, Texas, Daniel R. Goodfellow, Wenatchee, Washington, J. Stephen Goodfellow, Wenatchee, Washington, the Goodfellow Main Trust fbo Chad S. Goodfellow, Wenatchee, Washington, the Goodfellow Main Trust fbo Chelsea D. Goodfellow, Wenatchee, Washington, Harvey C. King 1992 Revocable Living Trust, Kailua, Hawaii, Charles S. Leis, Eagle, Idaho, Stanley B. Leis, Eagle, Idaho, Stephen T. Leis, Kihei, Hawaii, Roger McArthur Revocable Living Trust, Wailuku, Hawaii, Linda Tomlinson Mitchell, Gun Barrel City, Texas, Jeffrey S. Moore, Lisle, Illinois, Jeffrey Soulier, Kihei, Hawaii, Edward B. Tomlinson, II, Rowlett, Texas, Brad Wagenaar, Honolulu, Hawaii, William W. Wilmore Revocable Trust, Kahului, Hawaii, and Sherry Wortham, Wills Point, Texas;* to collectively control and retain 25 percent or more of the shares of Texas Brand Bancshares, Inc., and therefore indirectly, Texas Brand Bank, both of Garland, Texas.

Board of Governors of the Federal Reserve System, August 15, 2016.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2016–19735 Filed 8–17–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10628 and CMS–10180]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by October 17, 2016.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ______, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10628 Initial Request for State Implemented Moratorium Form

CMS–10180 Children's Health Insurance Program (CHIP) Report on Payables and Receivables

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term "collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a

60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection of information (Request for new OMB control number); *Title of Information Collection:* Initial Request for State Implemented Moratorium Form; *Use:* CMS promulgated 42 CFR 424.570 in order to comply with that statute, which requires that prior to implementing state Medicaid moratoria the state Medicaid agency must notify the Secretary in writing, including all of the details of the moratoria, and obtain the Secretary's concurrence with the imposition of the moratoria. The above regulation is promulgated from 1866 (j)(7) of the Social Security Act, which allows for the imposition of temporary moratorium. The Initial Request for State Medicaid Implemented Moratorium, named the "Initial Request for State Medicaid Implemented Moratorium" was created to collect that data, in a uniform manner, which the states report to CMS when they request a moratorium. Currently, CMS is collecting this data on an ad-hoc basis, however this process needs to be standardized so that moratoria decisions are being made based on the same criteria each time.

The goal of the Initial Request for State Medicaid Implemented Moratorium form is to provide a uniform application process that all of the states may follow so that CMS is able to administer the Medicaid or Children's Health Insurance Program moratorium process in a standardized and repeatable manner. This form creates a standardized process so that moratoria decisions are being made with the same criteria each time. *Form Number:* CMS–10628 (OMB control number: 0938–NEW); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 15; *Total Annual Responses:* 15; *Total Annual Hours:* 75. (For policy questions regarding this collection contact Belinda Gravel at 410–786–8934).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Children's Health Insurance Program (CHIP) Report on Payables and Receivables; *Use:* Collection of CHIP data and the calculation of the CHIP Incurred But Not Reported (IBNR) estimate are pertinent to CMS' financial audit. Section 2105 of the Social Security Act (Title XXI) requires the Secretary to estimate the amount each State should be paid at the beginning of each quarter. This amount is based on a report filed by the State. Section 2105 of the Social Security Act authorizes the Secretary to pay the amount estimated, reduced or increased to the extent of any overpayment or underpayment for any prior quarter. Section 3515 of the CFO Act requires government agencies to produce auditable financial statements in accordance with Office of Management and Budget guidelines on Form and Content. The Government Management and Reform Act of 1994 requires that all offices, bureaus and associated activities of the 24 CFO Act agencies must be covered in an agency-wide, audited financial statement. Collection of CHIP data and the calculation of the CHIP Incurred But Not Reported (IBNR) estimate are pertinent to CMS' financial audit. The CHIP Report on Payables and Receivables will provide the information needed to calculate the CHIP IBNR. Failure to collect this information could result in non-compliance with the law. Program expenditures for the CHIP have increased since its inception; as such, CHIP receivables and payables may materially impact the financial statements. The CHIP Report on Payables and Receivables will provide the information needed to calculate the CHIP IBNR.; *Form Number:* CMS–10180 (OMB control number: 0938–0988); Frequency: Reporting—Annually; *Affected Public:* State, Local or Tribal governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 392. (For policy questions regarding this collection contact Beverly Boher at 410–786–7806.)

Dated: August 12, 2016.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2016–19656 Filed 8–17–16; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting Announcement for the Technical Advisory Panel on Medicare Trustee Reports

ACTION: Notice of public meeting.

SUMMARY: This notice announces the meeting dates for the Technical Advisory Panel on Medicare Trustee Reports on Tuesday, August 30, 2016 and Wednesday August 31, 2016 in Washington, DC.

DATES: The meeting will be held on Tuesday, August 30, 2016 from 10:00 a.m. to 5:00 p.m. and Wednesday August 31, 2016, from 9:00 a.m. to 4:00 p.m. Eastern Daylight Time (EDT) and it is open to the public.

ADDRESSES: The meeting will be held at the Herbert Humphrey Building 200 Independence Ave. SW., Washington, DC, 20201 Room 738G.3.

FOR FURTHER INFORMATION CONTACT: Dr. Donald Oellerich, Designated Federal Officer, at the Office of Human Services Policy, Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201, (202) 690–8410.

SUPPLEMENTARY INFORMATION:

I. Purpose: The Panel will discuss the long-term rate of change in health spending and may make recommendations to the Secretary on how the Medicare Trustees might more accurately estimate health spending in the short and long run. The Panel's discussion is expected to be very technical in nature and will focus on the actuarial and economic assumptions and methods by which Trustees might more accurately measure health spending. This Committee is governed by the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Committee is composed of 9 members appointed by the Assistant Secretary for Planning and Evaluation.

II. Agenda: The Panel will likely hear presentations from the HHS Office of the Actuary, the Department of the Treasury and the Office of the Assistant Secretary for Planning and Evaluation on issues they wish the panel to address. This may be followed by HHS staff presentations regarding long range growth, sustainability of provider payments under ACA and MACRA, methods for transitioning from short term (10 year) to long term (75 year) projections and methods and presentation of uncertainty in the report. After any presentations, the

Panel will deliberate openly on the topics. Interested persons may observe the deliberations, but the Panel will not hear public comments during this time. The Panel will also allow an open public session for any attendee to address issues specific to the topic.

III. Meeting Attendance: The Tuesday, August 30, 2016 and Wednesday August 31, 2016 meetings are open to the public; however, in-person attendance is limited to space available. Priority to attend the meeting in-person will be given to those who pre-register.

Meeting Registration: The public may attend the meeting in-person. Space is limited and registration is *required* in order to attend in-person. Registration may be completed by emailing or faxing all the following information to Dr. Donald Oellerich at *don.oellerich@hhs.gov* or fax 202–690–6562:

Name.
Company name.
Postal address.
Email address.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Dr. Oellerich, no later than August 24, 2016 by sending an email message to *don.oellerich@hhs.gov* or calling 202–690–8410.

Persons wishing to attend this meeting must register by following the instructions in the ''Meeting Registration'' section of this notice. A confirmation email will be sent to the registrants shortly after completing the registration process.

IV. Special Accommodations: Individuals requiring special accommodations must include the request for these services during registration.

V. Copies of the Charter: The Secretary's Charter for the Technical Advisory Panel on Medicare Trustee Reports is available upon from Dr. Donald Oellerich at *don.oellerich@hhs.gov* or by calling 202–690–8410.

Dated: August 10, 2016.

Kathryn E. Martin,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2016–19731 Filed 8–17–16; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that a meeting is scheduled to be held for the Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria (Advisory Council). The meeting will be open to the public; a public comment session will be held during the meeting. Pre-registration is required for members of the public who wish to attend the meeting and who wish to participate in the public comment session. Individuals who wish to attend the meeting and/or send in their public comment via email should send an email to *CARB@hhs.gov.* Registration information is available on the Web site *http://www.hhs.gov/ash/carb/* and must be completed by September 14, 2016; all in-person attendees must pre-register by this date. Additional information about registering for the meeting and providing public comment can be obtained at *http://www.hhs.gov/ash/carb/* on the Meetings page.

DATES AND TIMES: The meeting is tentatively scheduled to be held on September 19, 2016, from 12:30 p.m. to 5:30 p.m. ET. The confirmed times and agenda items for the meeting will be posted on the Web site for the Advisory Council at *http://www.hhs.gov/ash/carb/* when this information becomes available. Pre-registration for attending the meeting in person is required to be completed no later than September 14, 2016; public attendance at the meeting is limited to the available space.

ADDRESSES: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Great Hall, 200 Independence Avenue SW., Washington, DC 20201.

The meeting also can be accessed through a live webcast on the day of the meeting. For more information, visit *http://www.hhs.gov/ash/carb/.*

FOR FURTHER INFORMATION CONTACT: Bruce Gellin, Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services, Room 715H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Phone: (202) 260–6638; email: *CARB@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under Executive Order 13676, dated September 18, 2014, authority was given to the Secretary of HHS to establish the Advisory Council, in consultation with the Secretaries of Defense and Agriculture. Activities of the Advisory Council are governed by the provisions of Public Law 92–463, as amended (5 U.S.C. App.), which sets forth standards for the formation and use of federal advisory committees.

The Advisory Council will provide advice, information, and recommendations to the Secretary of HHS regarding programs and policies intended to support and evaluate the implementation of Executive Order 13676, including the National Strategy for Combating Antibiotic-Resistant Bacteria and the National Action Plan for Combating Antibiotic-Resistant Bacteria. The Advisory Council shall function solely for advisory purposes.

In carrying out its mission, the Advisory Council will provide advice, information, and recommendations to the Secretary regarding programs and policies intended to preserve the effectiveness of antibiotics by optimizing their use; advance research to develop improved methods for combating antibiotic resistance and conducting antibiotic stewardship; strengthen surveillance of antibiotic-resistant bacterial infections; prevent the transmission of antibiotic-resistant bacterial infections; advance the development of rapid point-of-care and agricultural diagnostics; further research on new treatments for bacterial infections; develop alternatives to antibiotics for agricultural purposes; maximize the dissemination of up-to-date information on the appropriate and proper use of antibiotics to the general public and human and animal healthcare providers; and improve international coordination of efforts to combat antibiotic resistance.

The September public meeting will be dedicated to the topics of Prevention and Stewardship. The meeting agenda will be posted on the Advisory Council Web site at *http://www.hhs.gov/ash/carb/* when it has been finalized. All agenda items are tentative and subject to change.

Public attendance at the meeting is limited to the available space. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Advisory Council at the address/telephone number listed above at least one week prior to the meeting. For those unable to attend in person, a live webcast will be available. More information on registration and accessing the webcast can be found at *http://www.hhs.gov/ash/carb/.*

Members of the public will have the opportunity to provide comments prior to the Advisory Council meeting by emailing *CARB@hhs.gov*. Public comments should be sent in by midnight September 14, 2016, and should be limited to no more than one page. All public comments received prior to September 14, 2016, will be provided to Advisory Council members; comments are limited to two minutes per speaker.

Dated: August 11, 2016.

Bruce Gellin,

Designated Federal Officer, Presidential Advisory Council on Combating Antibiotic-Resistant Bacteria, Deputy Assistant Secretary for Health.

[FR Doc. 2016–19657 Filed 8–17–16; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting Announcement for the Physician-Focused Payment Model Technical Advisory Committee Required by the Medicare Access and CHIP Reauthorization Act (MACRA) of 2015

ACTION: Notice of public meeting.

SUMMARY: This notice announces the meeting date for the Physician-Focused Payment Model Technical Advisory Committee (hereafter referred to as "the Committee") on Friday, September 16, 2016 in Washington, DC.

DATES: The meeting will be held on Friday, September 16, 2016, from 9:00 a.m. to 12:30 p.m. Eastern Daylight Time (EDT) and it is open to the public.

ADDRESSES: The meeting will be held in the Senate Meeting Room at the Residence Inn, 333 E Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ann Page, Designated Federal Officer, at the Office of Health Policy, Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201, (202) 690–6870.

SUPPLEMENTARY INFORMATION:

I. *Purpose:* The Physician-Focused Payment Model Technical Advisory Committee ("the Committee") is required by the Medicare Access and CHIP Reauthorization Act of 2015, 42 U.S.C 1395ee. This Committee is also governed by provisions of the Federal Advisory Committee Act, as amended (5 U.S.C App.), which sets forth standards for the formation and use of federal advisory committees. In accordance with its statutory mandate, the Committee is to review physician-focused payment model proposals and prepare recommendations regarding whether such models meet criteria that will be established through rulemaking by the Secretary of Health and Human Services (the Secretary). The Committee is composed of 11 members appointed by the Comptroller General.

II. *Agenda.* The Committee will continue discussions about the process by which physician-focused payment model proposals will be received and reviewed by the Committee after the Secretary establishes criteria for physician-focused payment models through rulemaking. There will be time allocated for public comment on the Committee's proposal review processes and revised draft documents. These revised documents will be posted on the Committee Web site and distributed on the Committee listserv prior to the public meeting.

III. *Meeting Attendance.* The September 16, 2016 meeting is open to the public; however, in-person attendance is limited to space available. Priority to attend the meeting in-person will be given to those who pre-register. If the meeting venue reaches its seating capacity, other registrants will be limited to participating by telephone.

Meeting Registration

The public may attend the meeting in-person or listen by phone via audio teleconference. Space is limited and registration is *required* in order to attend in-person or by phone. Registration may be completed online at *https://www.regonline.com/PTACMeetingsRegistration.* All the following information must be submitted when registering:

Name.
Company name.
Postal address.
Email address.

If sign language interpretation or other reasonable accommodation for a disability is needed, please contact Angela Tejeda, no later than September 8, 2016 by sending an email message to *Angela.Tejeda@hhs.gov* or calling 202–401–8297.

Persons wishing to attend this meeting must register by following the instructions in the "Meeting Registration" section of this notice. A confirmation email will be sent to the registrants shortly after completing the registration process.

IV. *Special Accommodations.* Individuals requiring special accommodations must include the request for these services during registration.

V. *Copies of the Charter.* The Secretary's Charter for the Physician-Focused Payment Model Technical Advisory Committee is available on the ASPE Web site at *https://aspe.hhs.gov/medicare-access-and-chip-reauthorization-act-2015.* Information about how to subscribe to the Committee's email listserv is found at *https://aspe.hhs.gov/contact-physician-focused-payment-model-technical-advisory-committee.*

Dated: August 8, 2016.

Kathryn E. Martin,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2016–19732 Filed 8–17–16; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA or the Council) will be holding a meeting to continue discussions and possibly develop recommendations regarding People Living with HIV/AIDS. The meeting will be open to the public.

DATES: The meeting will be held on September 26, 2016, from 1:30 p.m. to approximately 5:00 p.m. (ET) and September 27, 2016, from 9:00 a.m. to approximately 12:00 p.m. (ET).

ADDRESSES: 200 Independence Avenue SW., Washington, DC 20201 in the Penthouse (eighth floor), Room 800.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline Talev, Public Health Analyst, Presidential Advisory Council on HIV/AIDS, 330 C Street SW., Room L106B, Washington, DC 20024; (202) 795–7622 or *Caroline.Talev@hhs.gov.* More detailed information about PACHA can be obtained by accessing the Council's page on the *AIDS.gov* site at *www.aids.gov/pacha.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. In a memorandum, dated July 13, 2010, and under Executive Order 13703, dated July 30, 2015, the

President gave certain authorities to the PACHA for implementation of the National HIV/AIDS Strategy for the United States (Strategy). PACHA is currently operating under the authority given in Executive Order 13708, dated September 30, 2015.

PACHA provides advice, information, and recommendations to the Secretary regarding programs, policies, and research to promote effective treatment, prevention, and cure of HIV disease and AIDS, including considering common co-morbidities of those infected with HIV as needed, to promote effective HIV prevention and treatment and quality services to persons living with HIV disease and AIDS.

Substantial progress has been made in addressing the domestic HIV epidemic since the Strategy was released in July 2010. Under Executive Order 13703, the National HIV/AIDS Strategy for the United States: Updated to 2020 (Updated Strategy) was released. PACHA shall contribute to the federal effort to improve HIV prevention and care.

The functions of the Council are solely advisory in nature.

The Council consists of not more than 25 members. Council members are selected from prominent community leaders with particular expertise in, or knowledge of, matters concerning HIV and AIDS, public health, global health, philanthropy, marketing or business, as well as other national leaders held in high esteem from other sectors of society. Council members are appointed by the Secretary or designee, in consultation with the White House Office on National AIDS Policy. The agenda for the upcoming meeting will be posted on the *AIDS.gov* Web site at *www.aids.gov/pacha.*

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify Caroline Talev at *Caroline.Talev@hhs.gov.* Due to space constraints, pre-registration for public attendance is advisable and can be accomplished by contacting Caroline Talev at *Caroline.Talev@hhs.gov* by close of business on Monday, September 19, 2016. Members of the public will have the opportunity to provide comments at the meeting. Any individual who wishes to participate in the public comment session must register with Caroline Talev at *Caroline.Talev@hhs.gov* by close of business on Monday, September 19, 2016; registration for public comment will not be accepted by telephone. Individuals are encouraged to provide a written statement of any public comment(s) for accurate minute taking purposes. Public comment will be limited to two minutes per speaker. Any members of the public who wish to have printed material distributed to PACHA members at the meeting are asked to submit, at a minimum, 1 copy of the material(s) to Caroline Talev, no later than close of business on Monday, September 19, 2016.

Dated: July 28, 2016.

B. Kaye Hayes,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 2016–19660 Filed 8–17–16; 8:45 am]

BILLING CODE 4150–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Vaccine Research Center Board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personnel privacy.

Name of Committee: Vaccine Research Center Board of Scientific Counselors, NIAID.

Date: September 8–9, 2016.

Time: 8:00 a.m. to 2:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 40 Convent Drive, Bethesda, MD 20892.

Contact Person: John R Mascola, MD, Deputy Director, Vaccine Research Center, NIAID, NIH, 40 Convent Drive, Bethesda, MD 20892, (301) 496–1852, *jmascola@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 12, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19679 Filed 8–17–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection, 60-Day Comment Request: Certificate of Confidentiality Electronic Application System (OD)

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Office of Extramural Research (OER), the National Institutes of Health (NIH) will continue the use of the electronic application form for the submission of requests to the NIH for Certificates of Confidentiality (CoCs), which was launched in 2015.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Dr. Ann M. Hardy, NIH Extramural Human Research Protections Officer and Coordinator, Certificates of Confidentiality, Office of Extramural Programs, OER, NIH, 3701 Rockledge Dr., Room 3002, Bethesda, MD 20892, or call non-toll-free number (301) 435–2690, or Email your request, including your address to: *hardyan@od.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

PROPOSED COLLECTION: Certificate of Confidentiality Electronic Application System 0925–0689, expiration date 01/30/2017, Office of Extramural Research (OER), National Institutes of Health (NIH).

Need and Use of Information Collection: This application system provides one electronic form to be used by all research organizations that wish to request a Certificate of Confidentiality (CoC) from the NIH. As described in the authorizing legislation (Section 301(d) of the Public Health Service Act, 42 U.S.C. 241(d)), CoCs are issued by the agencies of Department of Health and Human Services (HHS), including the NIH, to authorize researchers conducting sensitive research to protect the privacy of human research subjects by enabling them to refuse to release names and identifying characteristics of subjects to anyone not connected with the research. At the NIH, the issuance of CoCs has been delegated to the individual NIH Institutes and Centers (ICs). To make the application process consistent across the entire agency, OER launched an electronic application system in 2015 that is used by research organizations that wish to request a CoC from any NIH IC. Having one system for all CoC applications to the NIH is more efficient for both applicants and NIH staff who process these requests. The NIH uses the information in the application to determine eligibility for a CoC and to issue the CoC to the requesting organization. It is anticipated that the NIH ICs will issue approximately 1300 new CoCs each year for eligible research projects.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total annualized burden hours estimate is 1,951.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average time per response (in hours)	Total annual burden hours
CoC Applicants—Private	455	1	90/60	683
CoC Applicants—State/local	650	1	90/60	975
CoC Applicants—Small business	130	1	90/60	195
CoC Applicants—Federal	65	1	90/60	98
Total	1,300	1,300		1,951

Dated: August 8, 2016.

Lawrence Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2016–19523 Filed 8–17–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: September 12–13, 2016.

Closed: September 12, 2016, 2:00 p.m. to 5:00 p.m.

Agenda: Second level review of grant applications.

Place: National Institutes of Health, Stone House, Building 16, Conference Room, Bethesda, MD 20892.

Open: September 13, 2016, 9:00 a.m. to 3:00 p.m.

Agenda: Update and discussion of current and planned FIC activities, including an overview and presentations from grantees of our International Research Scientist Development Award (IRSDA) Program and a presentation by Dr. Pamela Collins on global mental health research.

Place: National Institutes of Health, Stone House, Building 16, Conference Room, Bethesda, MD 20892.

Contact Person: Kristen Weymouth, Executive Secretary, Fogarty International Center, National Institutes of Health, 31 Center Drive, Room B2C02, Bethesda, MD 20892, (301) 496–1415, *weymouthk@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.fic.nih.gov/About/Advisory/Pages/default.aspx,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health HHS)

Dated: August 12, 2016.

Natasha M. Copeland,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19682 Filed 8–17–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Interventions/Biomarkers.

Date: September 9, 2016.

Time: 10:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David I. Sommers, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9606, Bethesda, MD 20892–9606, 301–443–7861, *dsommers@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NRSA Institutional Research TrainingT32.

Date: September 22, 2016.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: David M. Armstrong, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center/Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: August 12, 2016.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–19680 Filed 8–17–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of November 4, 2016 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 3, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Sarasota County, Florida and Incorporated Areas **Docket No.: FEMA–B–1461**	
City of North Port	Building Office, 4970 City Hall Boulevard, North Port, FL 34286.
City of Sarasota	City Hall, 1565 1st Street, Sarasota, FL 34236.
City of Venice	City Hall, 401 West Venice Avenue, Venice, FL 34285.
Town of Longboat Key	Public Works Department, 600 General Harris Street, Longboat Key, FL 34228.

Community	Community map repository address
Unincorporated Areas of Sarasota County	Sarasota County Zoning Department, 1001 Sarasota Center Boulevard, Sarasota, FL 34240.
Plymouth County, Massachusetts (All Jurisdictions) **Docket No.: FEMA–B–1326**	
Town of Duxbury	Town Hall, 878 Tremont Street, Duxbury, MA 02332.
Town of Kingston	Town Hall, 26 Evergreen Street, Kingston, MA 02364.
Town of Marshfield	Town Hall, 870 Moraine Street, Marshfield, MA 02050.
Town of Norwell	Town Hall, 345 Main Street, Norwell, MA 02061.
Town of Plymouth	Town Hall, 11 Lincoln Street, Plymouth, MA 02360.
Town of Scituate	Town Hall, 600 Chief Justice Cushing Highway, Scituate, MA 02066.
Bernalillo County, New Mexico and Incorporated Areas **Docket No.: FEMA–B–1523**	
City of Albuquerque	Development Review Services Division, 600 2nd Street Northwest, Suite 201, Albuquerque, NM 87102.
Unincorporated Areas of Bernalillo County	Bernalillo County Public Works Division, 2400 Broadway Southeast, Albuquerque, NM 87102.
San Patricio County, Texas and Incorporated Areas **Docket No.: FEMA–B–1510**	
City of Aransas Pass	City Hall, 600 West Cleveland Boulevard, Aransas Pass, TX 78336.
City of Gregory	City Hall, 204 West 4th Street, Gregory, TX 78359.
City of Ingleside	City Hall Annex, 2665 San Angelo Street, Ingleside, TX 78362.
City of Ingleside on the Bay	Ingleside on the Bay City Hall, 475 Starlight Drive, Ingleside, TX 78362.
City of Lake City	City Hall, 132 Cox Drive, Lake City, TX 78368.
City of Lakeside	Community Center, 101 Weber Lane, Lakeside, TX 78368.
City of Mathis	City Hall, 411 East San Patricio Avenue, Mathis, TX 78368.
City of Odem	City Hall, 514 Voss Avenue, Odem, TX 78370.
City of Portland	Public Works, 1101 Moore Avenue, Portland, TX 78374.
City of San Patricio	City Hall, 4516 Main Street, San Patricio, TX 78368.
City of Sinton	City Hall, 301 East Market Street, Sinton, TX 78387.
City of Taft	City Hall, 501 Green Avenue, Taft, TX 78390.
Unincorporated Areas of San Patricio County	Plymouth Annex Building, 313 North Rachal Avenue, Sinton, TX 78387.

[FR Doc. 2016–19668 Filed 8–17–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of December 8, 2016 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 3, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Watershed-based studies:

Community	Community map repository address
Upper Ocmulgee Watershed	
DeKalb County, Georgia and Incorporated Areas Docket No.: FEMA–B–1523	
City of Lithonia	City Hall, 6920 Main Street, Lithonia, GA 30058.
City of Stone Mountain	City Hall, 875 Main Street, Stone Mountain, GA 30083.
Unincorporated Areas of DeKalb County	DeKalb County Roads and Drainage Department, 727 Camp Road, Decatur, GA 30032.
Rockdale County, Georgia and Incorporated Areas Docket No.: FEMA–B–1523	
City of Conyers	Planning and Inspection Services, 1174 Scott Street, Conyers, GA 30012.
Unincorporated Areas of Rockdale County	Rockdale County Administration and Services Building, 958 Milstead Avenue, Conyers, GA 30012.
Walton County, Georgia and Incorporated Areas Docket No.: FEMA–B–1523	
City of Loganville	Planning and Development Office, 4385 Pecan Street, Loganville, GA 30052.
City of Monroe	City Hall, 215 North Broad Street, Monroe, GA 30655.
City of Social Circle	City Hall, 166 North Cherokee Road, Social Circle, GA 30025.
City of Walnut Grove	Walnut Grove City Hall, 2581 Leone Avenue, Loganville, GA 30052.
Town of Between	Between Town Hall, 2150 New Hope Church Road Southwest, Monroe, GA 30655.
Unincorporated Areas of Walton County	Walton County Planning and Development Office, 303 South Hammond Drive, Monroe, GA 30655.
Lower Wisconsin Watershed	
Richland County, Wisconsin and Incorporated Areas Docket No.: FEMA–B–1426	
City of Richland Center	City Hall, 450 South Main Street, Richland Center, WI 53581.
Unincorporated Areas of Richland County	Richland County Zoning Administrator Office, 181 West Seminary Street, Room 309, Richland Center, WI 53581.
Village of Boaz	Boaz Village Hall, 25433 Jackson Street, Richland Center, WI 53581.
Village of Cazenovia	Village Hall, 310 North Highway 58, Cazenovia, WI 53924.
Village of Lone Rock	Village Hall, 314 East Forest Street, Lone Rock, WI 53556.
Village of Viola	Village Hall, 106 West Wisconsin Street, Viola, WI 54664.
Village of Yuba	Village Hall, 22099 Main Street, Yuba, WI 54634.

II. Non-watershed-based studies:

Community	Community map repository address
Brown County, Indiana and Incorporated Areas Docket No.: FEMA–B–1463	
Town of Nashville	Brown County Area Plan Commission, 201 Locust Lane, Nashville, IN 47448.
Unincorporated Areas of Brown County	Brown County Area Plan Commission, 201 Locust Lane, Nashville, IN 47448.
Benton County, Oregon and Incorporated Areas Docket No.: FEMA–B–1511	
Unincorporated Areas of Benton County	Benton County Community Development Department, 360 Southwest Avery Avenue, Corvallis, OR 97333.

Community	Community map repository address
Linn County, Oregon and Incorporated Areas **Docket No.: FEMA–B–1511**	
City of Albany	City Hall, 333 Broadalbin Street Southwest, Albany, OR 97321.
Unincorporated Areas of Linn County	Linn County Courthouse, 300 Southwest 4th Avenue, Albany, OR 97321.

[FR Doc. 2016–19669 Filed 8–17–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of November 18, 2016 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 3, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

Community	Community map repository address
Wheeler Lake Watershed	
Franklin County, Tennessee and Incorporated Areas **Docket No.: FEMA–B–1523**	
Unincorporated Areas of Franklin County	Franklin County Planning and Zoning Office, 1 South Jefferson Street, Winchester, TN 37398.
Lawrence County, Tennessee and Incorporated Areas **Docket No.: FEMA–B–1523**	
Unincorporated Areas of Lawrence County	Lawrence County/City of Lawrenceburg Emergency Management Agency, 25 Public Square, Lawrenceburg, TN 38464.
Lincoln County, Tennessee and Incorporated Areas **Docket No.: FEMA–B–1523**	
Unincorporated Areas of Lincoln County	Lincoln County Courthouse, 312 West Market Street, Fayetteville, TN 37334.

[FR Doc. 2016–19664 Filed 8–17–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of October 20, 2016 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 3, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Non-watershed-based studies:

Community	Community map repository address
Kenai Peninsula Borough, Alaska and Incorporated Areas Docket No.: FEMA–B–1436	
City of Homer	City of Homer, Planning and Zoning Office, 491 East Pioneer Avenue, Homer, AK 99603.
City of Kenai	Donald E. Gilman River Center, 514 Funny River Road, Soldotna, AK 99669.
City of Seward	City Hall Annex, 238 5th Avenue, Seward, AK 99664.
Kenai Peninsula Borough	Donald E. Gilman River Center, 514 Funny River Road, Soldotna, AK 99669.
Cochise County, Arizona and Incorporated Areas Docket No.: FEMA–B–1524	
City of Douglas	Department of Public Works, 425 East 10th Street, Douglas, AZ 85607.
Unincorporated Areas of Cochise County	Cochise County Flood Control District, 1415 West Melody Lane, Building F, Bisbee, AZ 85603.
Sacramento County, California and Incorporated Areas Docket No.: FEMA–B–1532	
City of Galt	Public Works Department, 495 Industrial Drive, Galt, CA 95632.
Unincorporated Areas of Sacramento County	Municipal Services Agency, Department of Water Resources, 827 7th Street, Suite 301, Sacramento, CA 95814.
San Joaquin County, California and Incorporated Areas Docket No.: FEMA–B–1532	
Unincorporated Areas of San Joaquin County	Public Works, 1810 East Hazelton Avenue, Stockton, CA 95205.

Community	Community map repository address
Lyon County, Nevada and Incorporated Areas Docket No.: FEMA–B–1529	
Unincorporated Areas of Lyon County	27 South Main Street, Yerington, NV 89447.

[FR Doc. 2016–19663 Filed 8–17–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1641]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 3, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Illinois:						
Cook	Village of Elmwood Park (15–05–7561P).	The Honorable Angelo Saviano, Village President, Elmwood Park, Elmwood Park Village Hall, 11 Conti Parkway, Elmwood Park, IL 60707.	Village Hall, 11 Conti Parkway, Elmwood Park, IL 60707.	*http://www.msc.fema.gov/lomc*	Sept. 28, 2016	170089
Cook	Village of River Grove (15–05–7561P).	The Honorable Marilynn J. May, Village President, Village of River Grove, 2621 North Thatcher Avenue, River Grove, IL 60171.	Village Hall, Administrative Offices, 2621 North Thatcher Avenue, River Grove, IL 60171.	*http://www.msc.fema.gov/lomc*	Sept. 28, 2016	170152
Whiteside	City of Morrison (16–05–2654P).	The Honorable R. Everett Pannier, Mayor, City of Morrison, 200 West Main Street, Morrison, IL 61270.	City Hall, 200 West Main Street, Morrison, IL 61270.	*http://www.msc.fema.gov/lomc*	Oct. 19, 2016	170691
Whiteside	Unincorporated Areas of Whiteside County (16–05–2654P).	The Honorable James C. Duffy, Chairman, Whiteside County Board, 200 East Knox Street, Morrison, IL 61270.	County Courthouse, 200 East Knox Street, Morrison, IL 61270.	*http://www.msc.fema.gov/lomc*	Oct. 19, 2016	170687
Will	City of Joliet (16–05–2519P).	The Honorable Robert O'Dekirk, Mayor, City of Joliet, 150 West Jefferson Street, Joliet, IL 60432.	City Hall, 150 West Jefferson Street, Joliet, IL 60432.	*http://www.msc.fema.gov/lomc*	Sept. 16, 2016	170702
Will	City of Lockport (16–05–2927P).	The Honorable Steven Streit, Mayor, City of Lockport, 222 East 9th Street, Lockport, IL 60441.	Public Works and Engineering, 17112 South Prime Boulevard, Lockport, IL 60441.	*http://www.msc.fema.gov/lomc*	Oct. 3, 2016	170703
Kansas:						
Johnson	City of Edgerton (16–07–1285X).	The Honorable Donald B. Roberts, Mayor, City of Edgerton, 404 East Nelson Street, P.O. Box 255, Edgerton, KS 66021.	City Hall, 404 East Nelson Street, Edgerton, KS 66021.	*http://www.msc.fema.gov/lomc*	Oct. 10, 2016	200162
Johnson	City of Gardner (16–07–1285X).	The Honorable Chris C. Morrow, Mayor, City of Gardner, 420 North Cherry Street, Gardner, KS 66030.	City Hall, 120 East Main Street, Gardner, KS 66030.	*http://www.msc.fema.gov/lomc*	Oct. 10, 2016	200164
Johnson	Unincorporated Areas of Johnson County (16–07–1285X).	The Honorable Ed Eilert, Chairman, Johnson County, 111 South Cherry Street, Suite 3300, Olathe, KS 66061.	County Courthouse Planning Office, 111 South Cherry Street, Suite 3500, Olathe, KS 66061.	*http://www.msc.fema.gov/lomc*	Oct. 10, 2016	200159
Missouri:						
St. Charles	City of Cottleville (15–07–0674P).	The Honorable Jim Hennessey, Mayor, City of Cottleville, 5490 5th Street, Cottleville, MO 63304.	City Hall, 5490 5th Street, Cottleville, MO 63304.	*http://www.msc.fema.gov/lomc*	Sept. 21, 2016	290898
St. Charles	City of O'Fallon (15–07–0674P).	The Honorable Bill Hennessy, Mayor, City of O'Fallon, 100 North Main Street, O'Fallon, MO 63366.	City Hall, 100 North Main Street, O'Fallon, MO 63366.	*http://www.msc.fema.gov/lomc*	Sept. 21, 2016	290316
St. Charles	Unincorporated Areas of St. Charles County (15–07–0674P).	Mr. Steve Ehlmann, County Executive, St. Charles County, 100 North 3rd Street, Suite 318, St. Charles, MO 63301.	County Administration Building, 201 North 2nd Street, Suite 420, St. Charles, MO 63301.	*http://www.msc.fema.gov/lomc*	Sept. 21, 2016	290315
Ohio: Cuyahoga	City of Strongsville (16–05–2288P).	The Honorable Thomas, P. Perciak, Mayor, City of Strongsville, City Hall, 16099 Foltz Parkway, Strongsville, OH 44149.	City Hall, 16099 Foltz Parkway, Strongsville, OH 44149.	*http://www.msc.fema.gov/lomc*	Sept. 29, 2016	390132
Texas: Tarrant	City of Fort Worth (16–06–1158P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Department of Transportation and Public Works, 1000 Throckmorton Street, Fort Worth, TX 76102.	*http://www.msc.fema.gov/lomc*	Sept. 30, 2016	480596

[FR Doc. 2016–19665 Filed 8–17–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final Notice.

SUMMARY: New or modified Base (1-percent annual chance) Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, and/or regulatory floodways (hereinafter referred to as flood hazard determinations) as shown on the indicated Letter of Map Revision (LOMR) for each of the communities listed in the table below are finalized. Each LOMR revises the Flood Insurance Rate Maps (FIRMs), and in some cases the Flood Insurance Study (FIS) reports, currently in effect for the listed communities. The flood hazard determinations modified by each LOMR will be used to calculate flood insurance premium rates for new buildings and their contents.

DATES: The effective date for each LOMR is indicated in the table below.

ADDRESSES: Each LOMR is available for inspection at both the respective Community Map Repository address listed in the table below and online through the FEMA Map Service Center at *www.msc.fema.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final flood hazard determinations as shown in the LOMRs for each community listed in the table below. Notice of these modified flood hazard determinations has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

The modified flood hazard determinations are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The new or modified flood hazard information is the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to remain qualified for participation in the National Flood Insurance Program (NFIP).

This new or modified flood hazard information, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

This new or modified flood hazard determinations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings, and for the contents in those buildings. The changes in flood hazard determinations are in accordance with 44 CFR 65.4.

Interested lessees and owners of real property are encouraged to review the final flood hazard information available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 3, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Idaho:					
Ada (FEMA Docket No.: B–1606).	Unincorporated areas of Ada County (16–10–0201X).	The Honorable Dave Case, District Commissioner, Ada County, 200 West Front Street, 3rd Floor, Boise, ID 83702.	County Courthouse, 200 West Front Street, 3rd Floor, Boise, ID 83702.	Apr. 15, 2016	160001
Valley (FEMA Docket No.: B–1606).	City of Donnelly (16–10–0166P).	The Honorable Bradley Backus, Mayor, City of Donnelly, 169 Halferty Street, Donnelly, ID 83615.	City Hall, 169 Halferty Street, Donnelly, ID 83615.	Apr. 22, 2016	160121
Valley (FEMA Docket No.: B–1606).	Unincorporated areas of Valley County (16–10–0166P).	The Honorable Gordon Cruickshank, Chairman, Valley County Board of Commissioners, 219 North Main Street, Cascade, ID 83611.	Valley County Planning and Zoning Department, 219 North Main Street, Cascade, ID 83611.	Apr. 22, 2016	160220
Indiana:					
Decatur (FEMA Docket No.: B–1606).	City of Greensburg (15–05–5745P).	The Honorable Gary L. Herbert, Mayor, City of Greensburg, 314 West Washington Street, Greensburg, IN 47240.	City Hall, 314 West Washington Street, Greensburg, IN 47240.	Apr. 27, 2016	180043
Decatur (FEMA Docket No.: B–1606).	Unincorporated areas of Decatur County (15–05–5745P).	Mr. Rick J. Nobbe, Chairman, Decatur County Board of Commissioners, 150 Courthouse Square, Suite 133, Greensburg, IN 47240.	Decatur County Planning and Zoning Department, Decatur County Courthouse, 150 Courthouse Square, Suite 117, Greensburg, IN 47240.	Apr. 27, 2016	180430

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Massachusetts:					
Middlesex (FEMA Docket No.: B–1606).	City of Cambridge (15–01–2142P).	The Honorable David P. Maher, Mayor, City of Cambridge, 495 Massachusetts Avenue, Cambridge, MA 02139.	City Hall, 495 Massachusetts Avenue, Cambridge, MA 02139.	Apr. 8, 2016	250186
Middlesex (FEMA Docket No.: B–1606).	Town of Arlington (15–01–2142P).	Mr. Kevin F. Greeley, Chairman, Town of Arlington, Board of Selectmen, 730 Massachusetts Avenue, Arlington, MA 02476.	Planning and Community Development Department, 730 Massachusetts Avenue Annex, Arlington, MA 02476.	Apr. 8, 2016	250177
Middlesex (FEMA Docket No.: B–1606).	Town of Belmont (15–01–2142P).	Mr. Sami S. Baghdady, Chairman, Town of Belmont, Board of Selectmen, 455 Concord Avenue, Belmont, MA 02478.	Public Works Department, 455 Concord Avenue, Belmont, MA 02478.	Apr. 8, 2016	250182
Norfolk (FEMA Docket No.: B–1513).	City of Quincy (15–01–0874P).	The Honorable Thomas P. Koch, Mayor, City of Quincy, City Hall, 1305 Hancock Street, Quincy, MA 02169.	City Hall, 1305 Hancock Street, Quincy, MA 02169.	Aug. 21, 2015	255219
Norfolk (FEMA Docket No.: B–1513).	Town of Milton (15–01–0874P).	Mr. Denis Keohane, Selectman, Town of Milton, Town Office Building, 525 Canton Avenue, Milton, MA 02186.	Town Office Building, 525 Canton Avenue, Milton, MA 02186.	Aug. 21, 2015	250245
Michigan:					
Macomb (FEMA Docket No.: B–1606).	Charter Township of Washington (15–05–6512P).	Mr. Dan O'Leary, Township Supervisor, Charter Township of Washington, 57900 Van Dyke Road, Washington, MI 48094.	Planning and Zoning Department, 57900 Van Dyke Road, Washington, MI 48094.	Mar. 18, 2016	260447
Macomb (FEMA Docket No.: B–1606).	Township of Macomb (16–05–0488P).	Ms. Janet Dunn, Supervisor, Township of Macomb, 54111 Broughton Road, Macomb, MI 48042.	Planning and Zoning Department, 54111 Broughton Road, Macomb, MI 48042.	Apr. 19, 2016	260445
Minnesota: Cottonwood (FEMA Docket No.: B–1606).	City of Windom (15–05–5228P).	The Honorable Corey Maricle, Mayor, City of Windom, 444 9th Street, P.O. Box 38, Windom, MN 56101.	City Hall, 444 9th Street, Windom, MN 56101.	Mar. 17, 2016	270090
New York: Monroe (FEMA Docket No.: B–1606).	Town of Henrietta (15–02–1216P).	The Honorable Jack W. Moore, Town Supervisor, Town of Henrietta, 475 Calkins Road, Henrietta, NY 14467.	Town Hall, 475 Calkins Road, Henrietta, NY 14467.	Apr. 5, 2016	360419
Pennsylvania:					
Monroe (FEMA Docket No.: B–1606).	Borough of East Stroudsburg (15–03–2847P).	The Honorable Armand M. Martinelli, Mayor, Borough of East Stroudsburg, 24 Analomink Street, P.O. Box 303, East Stroudsburg, PA 18301.	Municipal Building 24 Analomink Street, East Stroudsburg, PA 18301.	Apr. 26, 2016	420691
Monroe (FEMA Docket No.: B–1606).	Borough of Stroudsburg (15–03–2847P).	Mr. Boyd Weiss, President of Council Borough of Stroudsburg, 700 Sarah Street, Stroudsburg, PA 18360.	Municipal Building, 700 Sarah Street, Stroudsburg, PA 18360.	Apr. 26, 2016	420694
Monroe (FEMA Docket No.: B–1606).	Township of Stroud (15–03–2847P).	Mr. Edward C. Cramer, Chairman, Township of Stroud, Board of Supervisors, 1211 North 5th Street, Stroudsburg, PA 18360.	Municipal Building, 1211 North 5th Street, Stroudsburg, PA 18360.	Apr. 26, 2016	420693
South Carolina: Greenville (FEMA Docket No.: B–1606).	City of Greenville (15–04–4735P).	The Honorable Knox White, Mayor, City of Greenville, 206 South Main Street, P.O. Box 2207, Greenville, SC 29601.	City Hall, 206 South Main Street, Greenville, SC 29601.	Apr. 25, 2016	450091
Texas:					
Collin (FEMA Docket No.: B–1606).	City of Dallas (15–06–3975P).	The Honorable Michael S. Rawlings, Mayor, City of Dallas, 1500 Marilla Street, Room 5EN, Dallas, TX 75201.	City Hall, 320 East Jefferson Boulevard, Room 321, Dallas, TX 75203.	Apr. 15, 2016	480171
Tarrant (FEMA Docket No.: B–1606).	City of Fort Worth (15–06–2415P).	The Honorable Betsy Price, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	City Hall, 1000 Throckmorton Street, Fort Worth, TX 76102.	Apr. 13, 2016	480596
Virginia:					
Pittsylvania (FEMA Docket No.: B–1606).	City of Danville (15–03–1839P).	The Honorable Sherman Saunders, Mayor, City of Danville, 115 Druid Lane, Danville, VA 24541.	City Hall, 427 Patton Street, Danville, VA 24541.	Mar. 25, 2016	510044

State and county	Location and case No.	Chief executive officer of community	Community map repository	Effective date of modification	Community No.
Roanoke (FEMA Docket No.: B–1551).	City of Roanoke (14–03–3119P).	The Honorable David A. Bowers, Mayor, City of Roanoke, 215 Church Avenue, Southwest, Room 452, Roanoke, VA 24011.	Engineering Department, Municipal Building, 215 Church Avenue, Roanoke, VA 24011.	Dec. 30, 2015	510130
Washington: King (FEMA Docket No.: B–1606).	City of Bellevue (15–10–0979P).	Mr. Brad Miyake, City Manager, City of Bellevue, 450 110th Avenue Northeast, Bellevue, WA 98009.	City Hall, 450 110th Avenue Northeast, Bellevue, WA 98009.	Mar. 15, 2016	530074
Spokane (FEMA Docket No.: B–1606).	City of Spokane Valley (15–10–1394P).	The Honorable David A. Condon, Mayor, City of Spokane Valley, 808 West Spokane Falls Boulevard, Spokane, WA 99201.	City Hall, 11707 East Sprague, Suite 106, Spokane Valley, WA 99203.	Mar. 18, 2016	530342
Wisconsin: St. Croix (FEMA Docket No.: B–1606).	Unincorporated areas of St. Croix County (15–05–3808P).	The Honorable Roger Larson, Chairman, Board of County Supervisors, St. Croix County, 1101 Carmichael Road, Hudson, WI 54016.	County Office Building, 1101 Carmichael Road, Hudson, WI 54016.	Apr. 1, 2016	555578

[FR Doc. 2016–19662 Filed 8–17–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below.

The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP). In addition, the FIRM and FIS report are used by insurance agents and others to calculate appropriate flood insurance premium rates for buildings and the contents of those buildings.

DATES: The effective date of December 22, 2016 which has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *www.msc.fema.gov* by the effective date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *www.msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 3, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

I. Watershed-Based Studies

HARPETH WATERSHED

Community	Community map repository address
Cheatham County, Tennessee and Incorporated Areas **Docket No.: FEMA–B–1457**	
Town of Kingston Springs	Town Hall, 396 Spring Street, Kingston Springs, TN 37082.
Town of Pegram	Town Hall, 308 Highway 70, Pegram, TN 37143.

HARPETH WATERSHED—Continued

Community	Community map repository address
Unincorporated Areas of Cheatham County	Cheatham County Floodplain Administrator's Office, 264 South Main Street, Ashland City, TN 37015.
Dickson County, Tennessee and Incorporated Areas **Docket No.: FEMA–B–1457**	
Unincorporated Areas of Dickson County	Dickson County Director of Planning and Zoning, 4 Court Square, Charlotte, TN 37036.
Williamson County, Tennessee and Incorporated Areas **Docket No.: FEMA–B–1457**	
City of Brentwood	City Hall, 5211 Maryland Way, Brentwood, TN 37027.
City of Fairview	City Hall, 7100 City Center Circle, Fairview, TN 37062.
City of Franklin	City Hall, Code Department, 109 3rd Avenue South, Franklin, TN 37064.
Unincorporated Areas of Williamson County	Williamson County Complex, Planning Department, 1320 West Main Street, Suite 125, Franklin, TN 37064.

II. Non-Watershed-Based Studies

Community	Community map repository address
Polk County, Florida and Incorporated Areas **Docket No.: FEMA–B–1521**	
City of Auburndale	City Hall, 1 Bobby Green Plaza, Auburndale, FL 33823.
City of Bartow	City Hall, Building Department, 450 North Wilson Avenue, Bartow, FL 33830.
City of Davenport	City Hall, 1 South Allapaha Avenue, Davenport, FL 33837.
City of Eagle Lake	City Hall, 75 North 7th Street, Eagle Lake, FL 33839.
City of Fort Meade	Building Department, 521 Northwest 4th Street, Fort Meade, FL 33841.
City of Frostproof	City Hall, 111 West 1st Street, Frostproof, FL 33843.
City of Haines City	City Hall, 620 East Main Street, Haines City, FL 33844.
City of Lake Alfred	Building Department, 120 East Pomelo Street, Lake Alfred, FL 33850.
City of Lake Wales	Municipal Administration Building, 201 West Central Avenue, Lake Wales, FL 33853.
City of Lakeland	City Hall, 228 South Massachusetts Avenue, Lakeland, FL 33801.
City of Mulberry	City Hall, 104 South Church Avenue, Mulberry, FL 33860.
City of Polk City	City Hall, 123 Broadway Boulevard Southeast, Polk City, FL 33868.
City of Winter Haven	City Hall, 451 3rd Street Northwest, Winter Haven, FL 33881.
Town of Dundee	Town Hall, 202 East Main Street, Dundee, FL 33838.
Town of Hillcrest Heights	Hillcrest Heights Town Hall, 151 North Scenic Highway, Babson Park, FL 33827.
Town of Lake Hamilton	Town Hall, 100 Smith Avenue, Lake Hamilton, FL 33851.
Unincorporated Areas of Polk County	Polk County Engineering Division, 330 West Church Street, Bartow, FL 33830.
Village of Highland Park	Polk County Engineering Division, 330 West Church Street, Bartow, FL 33830.
Sedgwick County, Kansas and Incorporated Areas **Docket No.: FEMA–B–1511**	
City of Andale	Sedgwick County Metropolitan Area Building and Construction Department, 1144 South Seneca Street, Wichita, KS 67213.
City of Bel Aire	City Hall, 7651 East Central Park Avenue, Bel Aire, KS 67226.
City of Bentley	Sedgwick County Metropolitan Area Building and Construction Department, 1144 South Seneca Street, Wichita, KS 67213.
City of Cheney	City Hall, 131 North Main Street, Cheney, KS 67025.
City of Clearwater	City Hall, 129 East Ross Avenue, Clearwater, KS 67026.
City of Colwich	City Hall, 310 South 2nd Street, Colwich, KS 67030.
City of Derby	City Hall, 611 Mulberry Street, Suite 300, Derby, KS 67037.
City of Eastborough	City Hall, 1 Douglas Avenue, Eastborough, KS 67207.
City of Garden Plain	City Hall, 505 North Main Street, Garden Plain, KS 67050.
City of Goddard	City Hall, 118 North Main Street, Goddard, KS 67052.
City of Haysville	Planning Department, 200 West Grand Street, Haysville, KS 67060.
City of Kechi	City Hall, 220 West Kechi Road, Kechi, KS 67067.
City of Maize	City Hall, 10100 West Grady Avenue, Maize, KS 67101.
City of Mount Hope	City Hall, 112 West Main Street, Mount Hope, KS 67108.
City of Mulvane	City Hall, 211 North 2nd Street, Mulvane, KS 67110.

Community	Community map repository address
City of Park City	Economic Development & Planning, 6110 North Hydraulic Street, Park City, KS 67219.
City of Valley Center	City Hall, 121 South Meridian Avenue, Valley Center, KS 67147.
City of Viola	City Hall, 121 South Main Street, Viola, KS 67149.
City of Wichita	Office of Storm Water Management, 455 North Main Street, 8th Floor, Wichita, KS 67202.
Unincorporated Areas of Sedgwick County	Sedgwick County Metropolitan Area Building and Construction Department, 1144 South Seneca Street, Wichita, KS 67213.
Carson City, Nevada (Independent City) **Docket No.: FEMA–B–1540**	
City of Carson City	Carson City Permit Center, 108 East Proctor Street, Carson City, NV 89701.
McKean County, Pennsylvania (All Jurisdictions) **Docket No.: FEMA–B–1536**	
Borough of Eldred	Borough Building, 3 Bennett Street, Eldred, PA 16731.
Borough of Lewis Run	Borough Office, 60 Main Street, Lewis Run, PA 16738.
Borough of Port Allegany	Borough Hall, 45 West Maple Street, Port Allegany, PA 16743.
Borough of Smethport	Borough Hall, 201 West Main Street, Smethport, PA 16749.
City of Bradford	City Hall, 24 Kennedy Street, Bradford, PA 16701.
Township of Annin	Annin Township Building, 67 Railroad Avenue, Turtlepoint, PA 16750.
Township of Bradford	Municipal Building, 136 Hemlock Street, Bradford, PA 16701.
Township of Ceres	Ceres Township Building, 12 Barbertown Road, Eldred, PA 16731.
Township of Corydon	Corydon Township Municipal Building, 2474 West Washington Street, Bradford, PA 16701.
Township of Eldred	Township Supervisors' Building, 1834 West Eldred Road, Eldred, PA 16731.
Township of Foster	Foster Township Municipal Building, 1185 East Main Street, Bradford, PA 16701.
Township of Hamilton	Hamilton Township Municipal Building, 2 Curtis Road, Ludlow, PA 16333.
Township of Hamlin	Hamlin Township Municipal Building, 22 Park Road, Hazel Hurst, PA 16733.
Township of Keating	Keating Township Building, 7160 Route 46, Smethport, PA 16749.
Township of Lafayette	Lafayette Township Hall, 7534 Route 59, Lewis Run, PA 16738.
Township of Liberty	Liberty Township Building, 4859 Route 155, Port Allegany, PA 16743.
Township of Norwich	Norwich Township Garage, 3853 West Valley Road, Smethport, PA 16749.
Township of Otto	Otto Township Office, 695 Main Street, Duke Center, PA 16729.
Township of Sergeant	Clermont Fire Department, 14183 Wilcox Road, Mount Jewett, PA 16740.
Township of Wetmore	Wetmore Township Hall, 318 Spring Street, Kane, PA 16735.

[FR Doc. 2016–19659 Filed 8–17–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2016–0002; Internal Agency Docket No. FEMA–B–1640]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with title 44, part 65 of the Code of Federal Regulations (44 CFR part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW., Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: August 3, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Arizona:.						
Maricopa	City of Peoria (15–09–3165P).	The Honorable Cathy Carlat, Mayor, City of Peoria, 8401 West Monroe Street, Peoria, AZ 85345.	City Hall, 8401 West Monroe Street, Peoria, AZ 85345.	*http://www.msc.fema.gov/lomc*	Aug. 26, 2016	040050
Maricopa	City of Tempe (15–09–2888P).	The Honorable Mark Mitchell, Mayor, City of Tempe, P.O. Box 5002, Tempe, AZ 85281.	Floodplain and Land Services, City of Tempe, 31 East 5th Street, Tempe, AZ 85284.	*http://www.msc.fema.gov/lomc*	Oct. 14, 2016	040054
Maricopa	Town of Wickenburg (16–09–0814P).	The Honorable John Cook, Mayor, Town of Wickenburg, 155 North Tegner Street, Suite A, Wickenburg, AZ 85390.	Town Hall, 155 North Tegner Street, Wickenburg, AZ 85390.	*http://www.msc.fema.gov/lomc*	Oct. 28, 2016	040056
Maricopa.	Unincorporated Areas of Maricopa County (15–09–2075P).	The Honorable Steve Chucri, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*http://www.msc.fema.gov/lomc*	Oct. 14, 2016	040037
Maricopa	Unincorporated Areas of Maricopa County (16–09–0814P).	The Honorable Clint L. Hickman, Chairman, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*http://www.msc.fema.gov/lomc*	Oct. 28, 2016	040037
Mohave	City of Lake Havasu (15–09–0823P).	The Honorable Mark S. Nexsen, Mayor, City of Lake Havasu, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	City Hall, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	*http://www.msc.fema.gov/lomc*	Sept. 1, 2016	040116
Mohave	City of Lake Havasu (16–09–1124P).	The Honorable Mark S. Nexsen, Mayor, City of Lake Havasu, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	City Hall, 2330 McCulloch Boulevard North, Lake Havasu, City, AZ 86403.	*http://www.msc.fema.gov/lomc*	Sept. 15, 2016 ...	040116

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Effective date of modification	Community No.
Mohave	Unincorporated Areas of Mohave County (15–09–0823P).	The Honorable Jean Bishop, Chair, Board of Supervisors, Mohave County, 700 West Beale Street, Kingman, AZ 86402.	Mohave County Development Services, Flood Control District, 3250 East Kino Avenue, Kingman, AZ 86409.	*http://www.msc.fema.gov/lomc*	Sept. 1, 2016	040058
Pima	Unincorporated Areas of Pima County (16–09–1464P).	The Honorable Sharon Bronson, Chair, Board of Supervisors, Pima County, 130 West Congress Street, 11th Floor, Tucson, AZ 85701.	Pima County Regional Flood Control District, 201 North Stone Avenue, 9th Floor, Tucson, AZ 85701.	*http://www.msc.fema.gov/lomc*	Oct. 6, 2016	040073
California:						
Los Angeles ...	City of Los Angeles (16–09–1177P).	The Honorable Eric Garcetti, Mayor, City of Los Angeles, 200 North Spring Street, Los Angeles, CA 90012.	Department of Public Works, 1149 South Broadway, Suite 700, Los Angeles, CA 90015.	*http://www.msc.fema.gov/lomc*	Sept. 30, 2016 ...	060137
Los Angeles ...	City of Los Angeles (16–09–1249P).	The Honorable Eric Garcetti, Mayor, City of Los Angeles, 200 North Spring Street, Los Angeles, CA 90012.	Department of Public Works, 1149 South Broadway, Suite 700, Los Angeles, CA 90015.	*http://www.msc.fema.gov/lomc*	Sept. 28, 2016 ...	060137
Orange	City of Irvine (16–09–0513P).	The Honorable Steven S. Choi, Ph.D., Mayor, City of Irvine, 1 Civic Center Plaza, Irvine, CA 92606.	City Hall, 1 Civic Center Plaza, Irvine, CA 92606.	*http://www.msc.fema.gov/lomc*	Sept. 6, 2016	060222
Orange	City of Lake Forest (16–09–0513P).	The Honorable Andrew Hamilton, Mayor, City of Lake Forest, 25550 Commercentre Drive, Suite 100, Lake Forest, CA 92630.	City Hall, 25550 Commercentre Drive, Suite 100, Lake Forest, CA 92630.	*http://www.msc.fema.gov/lomc*	Sept. 6, 2016	060759
Riverside	City of Murrieta (16–09–1601P).	The Honorable Randon Lane, Mayor, City of Murrieta, 1 Town Square, Murrieta, CA 92562.	Public Works and Engineering, 26442 Beckman Court, Murrieta, CA 92562.	*http://www.msc.fema.gov/lomc*	Oct. 11, 2016	060751
Riverside	City of Temecula (16–09–1601P).	The Honorable Michael S. Naggar, Mayor, City of Temecula, 41000 Main Street, Temecula, CA 92590.	City Hall, 41000 Main Street, Temecula, CA 92590.	*http://www.msc.fema.gov/lomc*	Oct. 11, 2016	060742
Nevada:						
Clark	Unincorporated Areas of Clark County (16–09–0249P).	The Honorable Steve Sisolak, Chairman, Board of Supervisors, Clark County, 500 South Grand Central Parkway, 6th Floor, Las Vegas, NV 89106.	Office of the Director of Public Works, 500 South Grand Central Parkway, Las Vegas, NV 89155.	*http://www.msc.fema.gov/lomc*	Sept. 22, 2016 ...	320003

[FR Doc. 2016–19658 Filed 8–17–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[DHS–2016–0058]

Homeland Security Information Network Advisory Committee; Meeting

AGENCY: Mission Services Support Division (MSSD)/Information Sharing and Services Organization (IS2O)/Office of Chief Information Officer (OCIO).

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Information Network Advisory Committee (HSINAC) calls a full body, in-person meeting of its membership to receive all relevant information and facilitate development of recommendations to the HSIN Program Management Office (PMO) in the major issue area of developing Focused Mission Growth outcome measures.

DATES: The HSINAC will meet Wednesday, September 14, 2016 from 8:30 a.m.—5:00 p.m. EST and Thursday, September 15, 2016 from 8:30 a.m.—1:00 p.m. PM EST in Washington, DC, and via conference call and HSIN Connect, an online web-conferencing tool, both of which will be made available to members of the general public. Please note that the meeting may end early if the committee has completed its business.

ADDRESSES: The meeting will be held in Washington, DC at 650 Massachusetts Avenue NW., 4th floor Conference Room and virtually via HSIN Connect, an online web-conferencing tool at *https://share.dhs.gov/hsinac,* and available via teleconference at 1–800–320–4330 Conference Pin: 372094 for all public audience members. To access the web conferencing tool, go to *https://share.dhs.gov/hsinac,* click on "enter as a guest," type in your name as a guest, and click "submit." The teleconference lines will be open for the public and the meeting brief will be posted beforehand on the **Federal Register** site (*https://www.federalregister.gov/*). If the Federal government is closed, the meeting will be rescheduled.

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Allison Buchinski, *allison.buchinski@associates.dhs.gov,* 202–343–4277, as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee. Comments must be submitted in writing no later than September 18, must be identified by the docket number—DHS–2016–0058, and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Allison Buchinski, *allison.buchinski@associates.hq.dhs.gov.* Also include the docket number in the subject line of the message.
- *Fax:* 202–447–3111
- *Mail:* Allison Buchinski, Department of Homeland Security, OPS CIO–D Stop 0426, 245 Murray Lane SW., BLDG 410, Washington, DC 20528–0426.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number (DHS–2016–0058) for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the HSINAC go to *http://www.regulations.gov* and type the docket number of DHS–2016–0058 into the ''search'' field at the top right of the Web site.

A public comment period will be held during the meeting on Wednesday, September 14, from 4:30 p.m. to 4:45 p.m. EST and again on Thursday, September 15, from 11:00 a.m. to 11:15 a.m. EST. Speakers are requested to limit their comments to three minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact one of the individuals listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael Brody, Email: *Michael.brody@hq.dhs.gov,* and Phone: 202–282–9464.

SUPPLEMENTARY INFORMATION: The Homeland Security Information Network Advisory Committee is an advisory body to the HSIN Program Office. This committee provides advice and recommendations to the DHS on matters relating to HSIN. These matters include system requirements, operating policies, community organization, knowledge management, interoperability and federation with other systems, and any other aspect of HSIN that supports the operations of DHS and its Federal, State, territorial, local, tribal, international, and private sector mission partners. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. appendix. The HSINAC provides advice and recommendations to DHS on matters relating to HSIN.

Agenda

The Agenda will consist of the following major components.

1. There will be a discussion between the HSIN Program and members of the committee in the following key areas:

a. Homeland Security Information Network Advisory Committee Members receive HSIN PMO updates on key issues, and offer critical feedback, guidance, and formulation of recommendations for future program enhancements. This update will include an Introduction to the alignment of HSIN under the Information Sharing Services Organization (IS2O), as well as, strategic update on HSIN's progresses, challenges, and future plans in FY17.

b. Members will partake in a session about the Program's goals to enhance the quality of the HSIN user experience while adding mission value, and discuss operational gaps that exist between State and local and the department through a feedback session with the group and members of the HSIN Executive Steering Committee (ESC).

c. HSIN Annual Assessment—Members partake in a short focus group session to assist in the development of a communications and outreach coordination schedule that includes partner-focused success stories illustrating HSIN's role in fulfilling its mission to be the central provider of information sharing capabilities that allow for collaboration, situational awareness, and information exchange to fulfill partner's homeland security mission areas.

2. The HSIN PMO will formally task the HSINAC to offer recommendation on the following key topics:

a. How HSIN can continue to achieve growth in its user base, across Federal, State, local, territorial, tribal, private sector, and international sectors through the advancement and/or addition of mission critical applications.

b. What steps the Program can take to ensure ease of access to the system through a seamless registration process.

c. How the Program can continue to support growth of the user population and advancement of field operations by defining mission advocate support staffing models.

3. Public comment period on both days.

4. Committee Deliberation.

5. Closing Remarks.

6. Adjournment of the meeting.

Dated: August 11, 2016.

James Lanoue,

HSIN Program Director.

[FR Doc. 2016–19661 Filed 8–17–16; 8:45 am]

BILLING CODE 9110–9B–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2016–0104: FXIA16710900000–156–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before September 19, 2016.

ADDRESSES: *Submitting Comments:* You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments on Docket No. FWS–HQ–IA–2016–0104.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2016–0104; U.S. Fish and Wildlife Service Headquarters, MS: BPHC; 5275 Leesburg Pike, Falls Church, VA 22041–3803.

When submitting comments, please indicate the name of the applicant and the PRT# you are commenting on. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Viewing Comments: Comments and materials we receive will be available for public inspection on *http://www.regulations.gov,* or by appointment, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the U.S. Fish and Wildlife Service, Division of

Management Authority, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703–358–2095.

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, "Delivering an Efficient, Effective, and Accountable Government," and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

Endangered Species

Applicant: University of South Carolina, Columbia, SC; PRT–93065B

The applicant requests a permit to import biological samples from wild olive ridley sea turtle (*Lepidochelys olivacea*) for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Zoological Society of San Diego, San Diego, CA; PRT–00019C

The applicant requests a permit to import four live captive-born Chinese giant salamanders (*Andrias davidianus*) for the purpose of enhancement of the survival of the species through captive breeding. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: Jay Russo, Katy, TX; PRT–94808B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following species to enhance species propagation or survival: Radiated tortoise (*Astrochelys radiata*). This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Freddy Valdez, Payson, UT; PRT–02160C

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2016–19715 Filed 8–17–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[XXXD5198NI DS61100000 DNINR0000.000000 DX61104]

Exxon Valdez Oil Spill Public Advisory Committee

AGENCY: Office of the Secretary, Interior.

ACTION: Meeting notice.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Trustee Council's (EVOSTC) Public Advisory Committee.

DATES: September 22, 2016, at 9:30 a.m.

ADDRESSES: EVOSTC Office Conference Room, Suite 220, Grace Hall, 4230 University Drive, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Dr. Philip Johnson, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The EVOSTC Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV.

The EVOSTC Public Advisory Committee Meeting agenda will include review of the FY17 Work Plan of EVOSTC Restoration, Research, and Monitoring Projects; FY17 EVOSTC Annual Budget; and Habitat matters, as applicable. An opportunity for public comments will be provided. The final agenda and materials for the meeting will be posted on the *Exxon Valdez* Oil Spill Trustee Council Web site at *www.evostc.state.ak.us.* All EVOSTC

Public Advisory Committee meetings are open to the public.

Michaela Noble,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 2016–19674 Filed 8–17–16; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY–957000–16–L13100000–PP0000]

Filing of Plats of Survey, Nebraska and Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is scheduled to file plats of survey thirty (30) calendar days from the date of this publication in the BLM Wyoming State Office, Cheyenne, Wyoming. The surveys were executed at the request of the U. S. Forest Service, the Bureau of Indian Affairs and the Bureau of Land Management and are necessary for the management of these lands. The lands surveyed are:

The plat and field notes representing the dependent resurvey of portions of the west and north boundaries and portions of the subdivisional lines, and the survey of the subdivision of certain sections, Township 30 North, Range 52 West, Sixth Principal Meridian, Nebraska, Group No. 183, was accepted August 11, 2016.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines, and the survey of the subdivision of section 24, Township 30 North, Range 53 West, Sixth Principal Meridian, Nebraska, Group No. 183, was accepted August 11, 2016.

The plat and field notes representing the corrective dependent resurvey of portions of the subdivisional lines and the subdivision of section 32, the dependent resurvey of portions of the east, south and west boundaries, the subdivisional lines and subdivision of section lines, and the survey of the subdivision of certain sections, Township 26 North, Range 6 East, Sixth Principal Meridian, Nebraska, Group No. 184, was accepted August 11, 2016.

The plat and field notes representing the dependent resurvey of portions of Lot No. 43, a portion of the Fourteenth Guide Meridian West, through Township 24 North, between Ranges 112 and 113 West, portions of the subdivisional lines, and the 1899 meanders of the banks of the Green River, the survey of the subdivision of section 5, the survey of the 2013 meanders of the westerly shore of Fontenelle Reservoir in section 5, and the metes and bounds survey of the west right-of-way of Wyoming State Highway No. 189 through section 5, Township 24 North, Range 112 West, Sixth Principal Meridian, Wyoming, Group No. 894, was accepted August 11, 2016.

The plat and field notes representing the dependent resurvey of a portion of the Sixth Standard Parallel North, through Range 112 West, portions of the subdivisional lines, and the 1901 meanders of the banks of the Green River, the survey of the subdivision of certain sections, the survey of the 2013–2014 meanders of the westerly shore of Fontenelle Reservoir in certain sections, and the metes-and-bounds survey of the west right-of-way of Wyoming State Highway No. 189 through certain sections, Township 25 North, Range 112 West, Sixth Principal Meridian, Wyoming, Group No. 895, was accepted August 11, 2016.

The plat and field notes representing the dependent resurvey of a portion of the east boundary and subdivisional lines, and the survey of the subdivision of section 24, Township 13 North, Range 82 West, Sixth Principal Meridian, Wyoming, Group No. 929, was accepted August 11, 2016.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 27, Township 54 North, Range 85 West, Sixth Principal Meridian, Wyoming, Group No. 930, was accepted August 11, 2016.

The plat and field notes representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the survey of the subdivision of sec. 2, Township 13 North, Range 77 West, Sixth Principal Meridian, Wyoming, Group No. 931, was accepted August 11, 2016.

The plat and field notes representing the dependent resurvey of portions of the subdivisional lines, subdivision of section 24 and lots 10, 11 and 12, section 24, Township 14 North, Range 84 West, Sixth Principal Meridian, Wyoming, Group No. 932, was accepted August 11, 2016.

The plat and field notes representing the dependent resurvey of a portion of the east boundary and the survey of the subdivision of section 12, Township 29 North, Range 100 West, Sixth Principal Meridian, Wyoming, Group No. 933, was accepted August 11, 2016.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines, and a portion of the subdivision of section 15, Township 18 North, Range 80 West, Sixth Principal Meridian, Wyoming, Group No. 935, was accepted August 11, 2016.

The plat and field notes representing the dependent resurvey of a portion of the subdivisional lines and the survey of the subdivision of section 19, Township 50 North, Range 63 West, Sixth Principal Meridian, Wyoming, Group No. 936, was accepted August 11, 2016.

The plat and field notes representing the dependent resurvey of a portion of the Thirteenth Auxiliary Guide Meridian West, through Township 31 North, between Ranges 108 and 109 West, the subdivisional lines and the 1892 meanders of the banks of New Fork River in section 12, and the survey of the subdivision of section 12, Township 31 North, Range 109 West, Sixth Principal Meridian, Wyoming, Group No. 939, was accepted August 11, 2016.

FOR FURTHER INFORMATION CONTACT: WY957, Bureau of Land Management, 5353 Yellowstone Road, P.O. Box 1828, Cheyenne, Wyoming 82003.

SUPPLEMENTARY INFORMATION: A person or party who wishes to protest against any of the above surveys must file a written notice within thirty (30) calendar days from the date of this publication with the Wyoming State Director, Bureau of Land Management, at the above address, stating that they wish to protest. A statement of reasons for the protest may be filed with the notice of protest and must be filed with the Wyoming State Director within thirty (30) calendar days after the protest is filed. If a protest against the survey is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed or otherwise resolved. Before including your address, phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Copies of the preceding described plats and field notes are available to the public at a cost of $4.20 per plat and $.13 per page of field notes.

Dated: August 12, 2016.

John P. Lee,

Chief Cadastral Surveyor, Division of Support Services.

[FR Doc. 2016–19708 Filed 8–17–16; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[16XL1109AF–LLUT922300–L13200000–EL0000, UTU–84102 24–1A]

Notice of Federal Competitive Coal Lease Sale, Greens Hollow Tract, Utah (Coal Lease Application UTU–84102)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Department of the Interior, Bureau of Land Management (BLM) Utah State Office, will offer the Federal coal resources described below as the Greens Hollow Tract (UTU–84102) for competitive sale by sealed bid, in accordance with the Mineral Leasing Act of 1920, as amended, and the applicable implementing regulations. The sale tract is located in Sanpete and Sevier Counties, Utah.

DATES: The lease sale will be held at 1:00 p.m. Mountain Daylight Time, on September 22, 2016.

Sealed bids must be sent by certified mail, return receipt requested, to the Collections Officer, BLM, Utah State Office, or be hand-delivered to the BLM public room Contact Representatives, BLM Utah State Office, at the address indicated below, and must be received on or before 10:00 a.m. Mountain Daylight Time, on September 22, 2016.

Any bid received after the time specified will not be considered and will be returned. The BLM Contact Representatives will issue a receipt for each hand-delivered, sealed bid. The outside of the sealed envelope containing the bid must clearly state the envelope contains a bid for Coal Lease Sale UTU–84102, and is not to be opened before the date and hour of the sale.

ADDRESSES: Sealed bids must be mailed to the Collection Officer or hand-delivered to the BLM public room Contact Representative at BLM, Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101–1345. The opening of the sealed bids will take place at the Salt Lake City Public Library, 210 East 400 South, Salt Lake City, Utah at 1:00 p.m. Mountain Daylight Time.

FOR FURTHER INFORMATION CONTACT: Contact Jeff McKenzie, 440 West 200 South, Suite 500 Salt Lake City, Utah 84101–1345 or telephone 801–539–4038. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to leave a message or question for the above individual. The FIRS is available 24 hours a day, 7 days a week. Replies are provided during scheduled business hours.

SUPPLEMENTARY INFORMATION: This Coal Lease Sale is being held in response to a lease by application submitted by Ark Land Company (Ark). That application was assigned by Ark to Canyon Fuel Company, LLC, a subsidiary of Bowie Resource Partners, LLC. The assignment was effective September 1, 2013 and was approved by the BLM on July 1, 2014. The coal resources to be offered consist of all recoverable reserves available in the lands identified below. These lands are located in Sanpete and Sevier Counties, Utah, approximately 10.5 miles west of Emery, Utah, under surface lands managed by the Manti-La Sal and Fishlake National Forests. Those lands are described as follows:

Salt Lake Meridian, Sevier County, Utah

T. 20 S., R. 4 E.,
  Sec. 36, lot 4, E½NE¼, NE¼SE¼.
T. 21 S., R. 4 E.,
  Sec. 1;
  Sec. 2, SE¼;
  Sec. 11, E½, E½W½;
  Sec. 12, NE¼, W½, W½SE¼;
  Sec. 13, W½NE¼, NW¼;
  Sec. 14, NE¼, E½NW¼.
T. 21 S., R. 5 E.,
  Sec. 6.

Salt Lake Meridian, Sanpete and Sevier Counties, Utah

T. 20 S., R. 5 E.,
  Sec. 19, lots 5 thru 8, E½SW¼, SE¼;
  Sec. 20, S½;
  Sec. 21, W½SW¼;
  Sec. 28, W½;
  Sec. 29, 30, and 31;
  Sec. 32, N½, N½S½;
  Sec. 33, NW¼NW¼.

The area described contains 6,175.39 acres.

The coal in the Greens Hollow Tract has one minable coal bed, which is designated as either the Upper Hiawatha or the Lower Hiawatha seam. These seams are approximately 11 feet in thickness. The coal beds contain approximately 55.7 million tons of recoverable high-volatile C bituminous coal. The "as received basis" coal quality in the Upper Hiawatha coal bed is: 11,565 Btu/lb., 7.46 percent moisture, 9.81 percent ash, 36.55 percent volatile matter, 46.1 percent fixed carbon, and 0.55 percent sulfur. The "as received basis" coal quality in the Lower Hiawatha coal bed is: 11,538 Btu/lb., 7.21 percent moisture, 9.69 percent ash, 38.88 percent volatile matter, 43.85 percent fixed carbon, and 1.26 percent sulfur.

Pursuant to the applicable regulations, the Greens Hollow Tract may be leased to the qualified bidder (as established at 43 CFR subpart 3472) that submits the highest cash bonus bid that is equal to or exceeds the Fair Market Value (FMV) for the tract as determined by the authorized officer after the sale. The BLM has prepared its fair market value estimate for the tract, which estimate has been reviewed by the Department of Interior's Office of Valuation Services.

The Department of the Interior has established a general minimum bid of $100 per acre or fraction thereof for the tract. The minimum bid is not intended to represent the FMV, and a tract will not be sold unless the bid received meets or exceeds BLM's FMV estimate. The lease that may be issued as a result of this offering will provide for payment of an annual rental of $3 per acre or fraction thereof, and a royalty of 8 percent of the value of the coal produced by underground mining methods. The value of the coal for royalty purposes will be determined in accordance with 30 CFR part 1206, subpart F. This coal lease application (UTU–84102) is not subject to case-by-case processing fees pursuant to 43 CFR 3473.2(f). However, the successful bidder must pay to the BLM the cost BLM incurs regarding the publishing of this sale notice. If there is no successful bidder, the applicant will be responsible for all publishing costs.

The required detailed statement under 43 CFR 3422.2 for the offered tract, including bidding instructions and sale procedures under 43 CFR 3422.3–2, and the terms and conditions of the proposed coal lease, is available from BLM, Public Room (Suite 500), Utah State Office, 440 West 200 South, 5th Floor, Salt Lake City, Utah 84101–1345. All case file documents and written comments submitted by the public on FMV, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, are available for public inspection during normal business hours in the BLM Public Room (Suite 500).

The actions announced by this notice are consistent with the Department of the Interior Secretarial Order 3338, which allows for a lease sale to be held and lease to be issued for a pending application where the environmental impact statement under the National

Environmental Policy Act had been completed and a Record of Decision had been issued by the BLM or applicable surface management agency prior to the issuance of the Order. Here the BLM held a public hearing and requested comments on the Environmental Impact Statement, Maximum Economic Recovery, and the FMV of the Greens Hollow Tract on May 6, 2009. The Governor of the State of Utah recommended proceeding with this lease sale on May 26, 2011.

The United States Forest Service prepared a Final Supplemental Environmental Impact Statement, and signed a Record of Decision and a consent to lease on October 5, 2015, prior to the issuance of Order 3338. The BLM signed a Record of Decision to hold the lease sale on August 12, 2016.

Authority: 43 CFR 3420.1

Jenna Whitlock,

Acting State Director.

[FR Doc. 2016–19727 Filed 8–17–16; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–21666; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before July 30, 2016, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by September 2, 2016.

ADDRESSES: Comments may be sent via U.S. Postal Service to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447.

SUPPLEMENTARY INFORMATION:

The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before July 30, 2016. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

INDIANA

Boone County

Lebanon Courthouse Square Historic District, Roughly bounded by North, East, South, Superior & West Sts., Lebanon, 16000610

Fountain County

Mc Donald, James and Lucinda, House, 500 E. Jackson St., Attica, 16000611

Hendricks County

Blanton, Forest W. and Jeannette Wales, House, 625 N. Washington St., Danville, 16000612

Vigo County

New Goshen District No. 2 School (Indiana's Public Common and High Schools MPS), 9620 Rangeline Place, New Goshen, 16000613

IOWA

Linn County

Coggon Public School, 408 E. Linn St., Coggon, 16000605

Muscatine County

Wilton Commercial Historic District (Iowa's Main Street Commercial Architecture MPS), Roughly bounded by 4th, E. & W. Cedar, Railroad E. & W. & Chestnut Sts., Wilton, 16000606

Polk County

Cottage Grove Avenue Presbyterian Church (The City Beautiful Movement and City Planning in Des Moines, Iowa, 1892–1938 MPS), 1050 24th St., Des Moines, 16000607

Story County

Masonic Temple (Home for Science and Technology: Ames, IA MPS), 413, 417, 427, 429 Douglas Ave., Ames, 16000608

Winneshiek County

Milwaukee and St. Paul Railway Combination Depot, 203 W. Pearl St., Decorah, 16000609

MISSISSIPPI

Alcorn County

Quitman Downtown—Mill Historic District, Roughly bounded by Long Blvd., Jackson, Franklin & Railroad Aves., Quitman, 16000614

Harrison County

Gulf Gardens Historic District, Roughly bounded by 34th Ave., Terrance Dr., 18th & 15th Sts., Gulfport, 16000615

Pearl River County

Hermitage, The, 1 River Rd., Picayune, 16000616

OHIO

Cuyahoga County

Lion Knitting Mills, 3256 W. 25th St., Cleveland, 16000617

OKLAHOMA

Comanche County

Central Fire Station, 623 SW. D Ave., Lawton, 16000618

Creek County

Klingensmith Park Amphitheater, W. 7th, W. 5th & Country Club Dr., Bristow, 16000619

Oklahoma County

Lincoln Park Bathhouse, 2000 Remington Place, Oklahoma City, 16000620

Mutual Savings and Loan Association Building, 601–605 NW. 23rd St., Oklahoma City, 16000621

Payne County

Pruett House, 155 Redwood Dr., Stillwater, 16000622

Rogers County

Downtown Claremore Historic District, W. Will Rogers Blvd. bounded by Rt. 66, Muskogee Ave., 4th St. & alley between W. Will Rogers Blvd. & 2nd St., Claremore, 16000623

Tulsa County

Blue Cross Blue Shield of Oklahoma Building, 1215 S. Boulder Ave., Tulsa, 16000624

Downtown Tulsa YMCA, 515 S. Denver Ave., Tulsa, 16000625

OREGON

Jackson County

Eagle Point National Cemetery, 2763 Riley Rd., Eagle Point, 16000626

A request for removal has been received for the following resources:

INDIANA

Jackson County

Bell Ford Post Patented Diagonal "Combination Bridge", IN 258 1.5 mi. W of IN 258 and Community Dr., Seymour, 05000194

LOUISIANA

Calcasieu Parish

Arcade Theater, 822 Ryan St., Lake Charles, 78001420

Authority: 60.13 of 36 CFR part 60

Dated: August 2, 2016.

Julie H. Ernstein,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2016–19701 Filed 8–17–16; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2016–0051; MMAA104000]

Potential Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore California—Request for Interest

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Public notice of an unsolicited request for a commercial OCS wind lease, request for interest (RFI), and request for public comment.

SUMMARY: The purpose of this public notice is to: (1) Describe the unsolicited proposal submitted to BOEM by Trident Winds, LLC (Trident Winds) to acquire an OCS commercial wind lease; (2) solicit submissions of indications of interest in acquiring a commercial lease for wind energy development on the OCS offshore California in the area described in this notice; and (3) solicit public input regarding the area described in this notice, the potential environmental consequences associated with wind energy development in the area, and existing and planned multiple uses of the area.

On January 14, 2016, BOEM received an unsolicited request from Trident Winds for a commercial wind lease on the OCS. Trident Winds' proposed project would consist of a utility-scale floating wind energy facility offshore Morro Bay, California that would interconnect with the California electrical grid at the existing Morro Bay Power Plant. The project would be located, at its closest point, approximately 15 nautical miles (nmi) offshore Point Piedras Blancas in water depths of approximately 2,900 feet. Additional information on Trident Winds' unsolicited lease request can be viewed at *http://www.boem.gov/California/.*

This RFI is published pursuant to subsection 8(p)(3) of the OCS Lands Act, 43 U.S.C. 1337(p)(3), and BOEM's implementing regulations at 30 CFR part 585. Subsection 8(p)(3) of the OCS Lands Act requires that OCS renewable energy leases, easements, and rights-of-way be issued "on a competitive basis unless the Secretary [of the Interior] determines after public notice of a proposed lease, easement, or right-of-way that there is no competitive interest." This RFI provides public notice for the area requested by Trident Winds (the Proposed Lease Area) that is described below in the section "Description of the Proposed Lease Area," and invites the submission of indications of interest in acquiring a commercial wind lease within the Proposed Lease Area. Parties wishing to indicate competitive interest in the Proposed Lease Area should submit detailed and specific information as described in the section entitled "Required Indication of Interest Information." BOEM will consider the responses to this public notice to determine whether competitive interest exists in the Proposed Lease Area.

This announcement also requests that interested and affected parties comment and provide information about site conditions and any existing or planned multiple uses within the Proposed Lease Area that may be relevant to the proposed project or its potential impacts.

DATES: If you are submitting an indication of interest in acquiring a commercial wind lease for or within the Proposed Lease Area, your submission must be sent by mail, postmarked no later than September 19, 2016 for your submission to be considered. BOEM requests comments or other submissions of information by this same date.

SUBMISSION PROCEDURES: If you are submitting an indication of interest in acquiring a commercial wind lease, please submit it by mail to the following address: Bureau of Ocean Energy Management, Pacific Region Office of Strategic Resources, 760 Paseo Camarillo, Suite 102 (CM 102), Camarillo, California 93010. Submissions must be postmarked by September 19, 2016 to be considered by BOEM for the purposes of determining competitive interest. Your complete submission must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a compact disc (CD) to be an acceptable format for submitting an electronic copy. BOEM will list the parties that submit indications of interest and the OCS blocks proposed for development on the BOEM Web site after the 30-day comment period has closed.

If you are submitting comments or other information concerning the Proposed Lease Area, you may use either of the following two methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry entitled "Enter Keyword or ID," enter BOEM–2016–0051 and then click "search." Follow the instructions to submit public comments and view supporting and related materials available for this notice.
2. U.S. Postal Service or other delivery service. Send your comments and information to the following address: Bureau of Ocean Energy Management, Pacific Region Office of Strategic Resources, 760 Paseo Camarillo, Suite 102 (CM 102), Camarillo, California 93010.

All responses will be reported on *http://www.regulations.gov.* If you wish to protect the confidentiality of your submissions or comments, please identify and clearly label privileged or confidential information "Contains Confidential Information." Treatment of confidential information is addressed in the section of this notice entitled, "Privileged or Confidential Information." BOEM will post all comments on *http://www.regulations.gov,* unless it is labeled in the manner described above. Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Thurston, Renewable Energy Specialist, BOEM, Pacific Region Office of Strategic Resources, 760 Paseo Camarillo, Suite 102 (CM 102), Camarillo, California 93010, Phone: (805) 384–6303.

SUPPLEMENTARY INFORMATION:

Purpose of This Request for Interest

Responses to this public notice will allow BOEM to determine, pursuant to 30 CFR 585.231, whether or not there is competitive interest in acquiring an OCS commercial wind lease in the Proposed Lease Area. In addition, this notice provides an opportunity for the public to comment on the Proposed Lease Area, the proposed project, and any potential impacts wind energy development in the Proposed Lease Area may have. BOEM may use comments received to further identify and refine the area being considered for wind energy development, and inform future environmental analyses related to the project.

Background

Trident Winds Proposal

Trident Winds' proposed Morro Bay Offshore Project would consist of a utility-scale floating wind energy facility offshore Morro Bay, California. The proposed project would generate an anticipated 765 megawatts (MW) of electricity from approximately 100 floating units, each equipped with up to an 8–MW wind turbine generator and connected by inter-unit electrical cabling, with a single transmission cable exporting electricity to the mainland. Trident Winds proposes to interconnect the project with the California electrical grid at the existing Morro Bay Power Plant. The proposal also includes plans to increase the project to 1,000 MW at a later date if an agreement is reached between the developer and the State of California to purchase the additional power produced and additional transmission power is available. At its closest point, the project would be located approximately 15 nmi offshore Point Piedras Blancas in water depths of approximately 2,900 feet. The Monterey Bay National Marine Sanctuary is located adjacent to the northeast boundary of the proposed project. Additional information on Trident Wind's unsolicited lease request can be viewed at *http://www.boem.gov/California/*.

California Renewable Energy Portfolio Standards

In October 2015, the State of California passed the Clean Energy and Pollution Reduction Act of 2015 (SB–350), requiring the amount of electricity generated and sold to retail customers per year from eligible renewable energy resources be increased to 50 percent by December 31, 2030. New and modified electrical transmission facilities may be necessary to achieve the SB–350 goals. The proposed Trident Winds project may provide additional renewable energy capacity for use by the State of California to achieve its SB–350 goals.

Determination of Competitive Interest and the Leasing Process

After the publication of this notice, BOEM will evaluate indications of interest in acquiring a commercial wind lease in the Proposed Lease Area. At the conclusion of the comment period for this public notice, BOEM will review the submissions received and undertake a completeness review for each of those submissions and a qualifications review for each of the nominating entities. BOEM will then make a determination as to whether competitive interest exists.

If, in response to this notice, BOEM receives one or more indications of interest in acquiring a commercial wind lease from qualified entities that wish to compete for the Proposed Lease Area, BOEM may decide to move forward with the lease issuance process using competitive procedures pursuant to 30 CFR 585.211–225. If BOEM receives no competing indications of interest from qualified companies, BOEM may decide to move forward with the lease issuance process using the noncompetitive procedures contained in 30 CFR 585.231–232.

Should BOEM decide to proceed with issuing a lease in the Proposed Lease Area, whether competitively or noncompetitively, it will comply with all applicable requirements and provide the public with additional opportunities to provide input pursuant to 30 CFR part 585 and other applicable laws, such as the National Environmental Policy Act (NEPA). BOEM will also coordinate and consult, as appropriate, with relevant Federal agencies, affected tribes, affected state agencies, and affected local governments during the lease development and issuance process.

Description of the Proposed Lease Area

The Proposed Lease Area is located off the central coast of California, beginning approximately 15 nmi west of Point Piedras Blancas. The area extends approximately 21 nmi northwest to southeast, with a maximum width of approximately 6 nmi. The entire area is approximately 106 square miles (67,963 acres) and consists of 5 OCS blocks and 17 partial OCS blocks (191 sub blocks) (Table 1).

TABLE 1—LIST OF OCS BLOCKS INCLUDED IN THE REQUEST FOR INTEREST

Protraction name	Protraction number	Block number	Sub block
San Luis Obispo	NI10–03	6253	P.
San Luis Obispo	NI10–03	6254	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
San Luis Obispo	NI10–03	6255	E,I,M.
San Luis Obispo	NI10–03	6303	D,H,L,P.
San Luis Obispo	NI10–03	6304	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
San Luis Obispo	NI10–03	6305	A,E,I,M.
San Luis Obispo	NI10–03	6353	C,D,G,H,K,L,O,P.
San Luis Obispo	NI10–03	6354	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
San Luis Obispo	NI10–03	6355	A,B,E,F,I,J,M,N.
San Luis Obispo	NI10–03	6403	C,D,G,H,K,L.
San Luis Obispo	NI10–03	6404	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
San Luis Obispo	NI10–03	6405	A,B,E,F,G,I,J,K,L,M,N,O,P.
San Luis Obispo	NI10–03	6406	M.
San Luis Obispo	NI10–03	6454	D.
San Luis Obispo	NI10–03	6455	A,B,C,D,E,F,G,H,L.
San Luis Obispo	NI10–03	6456	A,B,E,F,G,H,I,J,K,L,M,N,O,P.
San Luis Obispo	NI10–03	6457	E,F,G,H,I,J,K,L,M,N,O,P.
San Luis Obispo	NI10–03	6458	E,F,I,J,M,N.
San Luis Obispo	NI10–03	6506	C,D.
San Luis Obispo	NI10–03	6507	A,B,C,D,E,F,G,H,K,L,P.
San Luis Obispo	NI10–03	6508	A,B,C,D,E,F,G,H,I,J,K,L,M,N,O,P.
San Luis Obispo	NI10–03	6558	A,B,C,D,E,F,G,H.

The boundary of the Proposed Lease Area follows the points listed in Table 2 in clockwise order. Coordinates are provided in UTM meters (UTM Zone 10N, NAD 83) and latitude/longitude decimal degrees (NAD83).

TABLE 2—LIST OF BOUNDARY POINTS INCLUDED IN THE REQUEST FOR INTEREST

Point number	UTM (Easting)	UTM (Northing)	Latitude	Longitude
1	610400	3955200	35.7346059	−121.7791773

TABLE 2—LIST OF BOUNDARY POINTS INCLUDED IN THE REQUEST FOR INTEREST—Continued

Point number	UTM (Easting)	UTM (Northing)	Latitude	Longitude
2	615200	3955200	35.73405568	−121.7261096
3	615200	3954000	35.72323874	−121.7262819
4	616400	3954000	35.72309758	−121.7130169
5	616400	3945600	35.64737882	−121.7142327
6	617600	3945600	35.6472366	−121.7009804
7	617600	3939600	35.59315144	−121.7018549
8	618800	3939600	35.59300805	−121.6886116
9	618800	3938400	35.58219101	−121.688788
10	620000	3938400	35.58204622	−121.6755466
11	620000	3937200	35.57122922	−121.6757246
12	621200	3937200	35.57108303	−121.6624851
13	621200	3936000	35.56026607	−121.6626649
14	622400	3936000	35.56011849	−121.6494272
15	622400	3934800	35.54930157	−121.6496087
16	632000	3934800	35.54806908	−121.5437251
17	632000	3931200	35.51561966	−121.5443115
18	634400	3931200	35.5152974	−121.5178522
19	634400	3924000	35.45039878	−121.5190434
20	629600	3924000	35.45103598	−121.5719198
21	629600	3926400	35.47266944	−121.5715373
22	628400	3926400	35.47282524	−121.5847602
23	628400	3927600	35.48364201	−121.5845706
24	627200	3927600	35.48379642	−121.5977953
25	627200	3928800	35.49461323	−121.5976074
26	624800	3928800	35.49491784	−121.6240607
27	624800	3930000	35.50573474	−121.6238762
28	622400	3930000	35.50603368	−121.6503335
29	622400	3931200	35.51685068	−121.6501524
30	620000	3931200	35.51714393	−121.6766137
31	620000	3932400	35.52796103	−121.676436
32	618800	3932400	35.52810553	−121.6896686
33	618800	3933600	35.53892267	−121.6894926
34	615200	3933600	35.53934765	−121.7291961
35	615200	3934800	35.55016493	−121.7290254
36	614000	3934800	35.55030374	−121.7422619
37	614000	3936000	35.56112106	−121.7420929
38	610400	3936000	35.56152894	−121.7818081
39	610400	3937200	35.57234641	−121.7816443
40	608000	3937200	35.57261116	−121.8081251
41	608000	3945600	35.64833356	−121.8070013
42	609200	3945600	35.64820154	−121.7937484
43	609200	3951600	35.70228811	-121.7929341

Map of the Proposed Lease Area

A map of the Proposed Lease Area can be found at: *http://www.boem.gov/California/*. A large-scale map of the Proposed Lease Area showing boundaries of the area with the numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Pacific Region Office of Strategic Resources, 760 Paseo Camarillo, Suite 102, Second Floor, Camarillo, California 93010.

Department of Defense Activities and Potential Stipulations

The Department of Defense (DOD) conducts offshore testing, training, and operations on the OCS and may request that BOEM condition any activities that might take place in the Proposed Lease Area. BOEM will consult with DOD regarding potential issues concerning offshore testing, training, and operational activities in an effort to try to minimize any potential impacts, and may develop stipulations, as appropriate, to mitigate the effects of renewable energy activities on any DOD activities in and around the Proposed Lease Area.

Required Indication of Interest Information

If you intend to submit an indication of interest in acquiring a commercial wind lease within the Proposed Lease Area, you must provide the following:

(1) The BOEM Protraction name, number, and specific whole or partial OCS blocks within the Proposed Lease Area that are of interest for commercial wind leasing, including any required buffer area(s). If your area(s) includes partial blocks, include the sub-block letter (A–P). Additionally, you should submit a shapefile or geodatabase of the project area compatible with ArcGIS 10.3 and in either NAD 83 unprojected, or NAD 83 UTM Zone 10 N. Any request for a commercial wind lease located outside of the Proposed Lease Area should be submitted separately pursuant to 30 CFR 585.230;

(2) A general description of your objectives and the facilities that you would use to achieve those objectives;

(3) A general schedule of proposed activities, including those leading to the development of a commercial wind energy project within the Proposed Lease Area;

(4) Available and pertinent data and information concerning renewable energy resources and environmental conditions in the area that you wish to lease, including energy and resource data and information used to evaluate the area of interest. Where applicable, spatial information should be submitted

in a format compatible with ArcGIS 10.3 in either NAD 83 unprojected, or NAD 83 UTM Zone 10 N;

(5) Documentation demonstrating that you are legally qualified to hold a lease as set forth in 30 CFR 585.106–107. Legal qualification documents will be placed in an official file that may be made available for public review. If you wish that any part of your legal qualification documentation be kept confidential, clearly identify what should be kept confidential, and submit it under separate cover (see "Protection of Privileged or Confidential Information Section," below); and

(6) Documentation demonstrating that you are technically and financially capable of constructing, operating, maintaining, and decommissioning the facilities described in paragraph (2) above. Guidance regarding the documentation that could be used to demonstrate your technical and financial qualifications can be found at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/QualificationGuidelines-pdf.aspx.* If you wish for any part of your technical and financial qualification documentation to be kept confidential, clearly identify what should be kept confidential, and submit it under separate cover (see "Protection of Privileged or Confidential Information," below).

It is critical that you provide a complete submission of interest so that BOEM may consider your submission in a timely manner. If BOEM reviews your submission and determines that it is incomplete, BOEM will inform you of this determination in writing and describe the information that BOEM needs from you in order for BOEM to deem your submission complete. You will be given 15 business days from the date of the letter to provide any information that BOEM has deemed missing from your original submission. If you do not meet this deadline, or if BOEM determines that your second submission is also insufficient, BOEM may deem your submission invalid. In such a case, BOEM will not consider your submission.

Requested Information From Interested or Affected Parties

BOEM is also requesting specific and detailed comments from the public and interested or affected parties regarding the following:

(1) Geological and geophysical conditions (including seabed conditions and shallow hazards) in the Proposed Lease Area;

(2) Historic properties and archaeological resources potentially affected by the installation of wind facilities in the Proposed Lease Area;

(3) Other uses of the Proposed Lease Area, including, but not limited to, navigation (including commercial and recreational vessel usage); commercial and recreational fishing; recreational activities (*e.g.,* dive sites, surfing, wildlife viewing, and scenic areas); Department of Defense activities; aviation; other energy-related development activities; scientific research; and utilities and communications infrastructure (*e.g.,* undersea energy and/or telecommunications cables);

(4) Other relevant environmental information relating to the Proposed Lease Area, including but not limited to: national marine sanctuary resources, protected species and habitats, marine mammals, sea turtles, birds, fish, zooplankton, and cultural resources; and

(5) Socioeconomic information relating to the Proposed Lease Area, such as demographics and employment or information relevant to environmental justice considerations.

Protection of Privileged or Confidential Information

Freedom of Information Act

BOEM will protect privileged or confidential information you submit when required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that is privileged or confidential. If you wish to protect the confidentiality of such information, please identify and clearly label it with "Contains Confidential Information" and request BOEM treat it as confidential. BOEM will not disclose such information if it qualifies for exemption from disclosure under FOIA. Information not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

BOEM will not treat as confidential any aggregate summaries of privileged or confidential information or comments not containing such information. Additionally, BOEM will not treat as confidential (1) the legal title of any entity submitting an indication of interest (for example, the name of your company), or (2) the list of whole or partial blocks that you are indicating an interest in leasing.

Section 304 of the National Historic Preservation Act (16 U.S.C. 470w–3(a))

BOEM is required to withhold the location, character, or ownership of historic resources if it determines disclosure may, among other things, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Those providing information eligible for protection under section 304 of NHPA should designate such information as confidential.

Dated: July 27, 2016.

Abigail Ross Hopper,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2016–19349 Filed 8–17–16; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–029]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 24, 2016 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–467 and 731–TA–1164–1165 (Review) (Narrow Woven Ribbons with Woven Selvedge from China and Taiwan). The Commission is currently scheduled to complete and file its determinations and views of the Commission on September 9, 2016.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 15, 2016.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–19806 Filed 8–16–16; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1306 (Final)]

Large Residential Washers From China; Scheduling of the Final Phase of an Antidumping Duty Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1306 (Final) pursuant to the Tariff Act of 1930 ("the Act") to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of large residential washers from China, provided for in subheading 8450.20.00 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be sold at less-than-fair-value.[1]

DATES: *Effective Date:* August 15, 2016.

FOR FURTHER INFORMATION CONTACT: Christopher Cassise ((202) 708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), as a result of an affirmative preliminary determination by the Department of Commerce that imports of large residential washers from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on December 16, 2015, by Whirlpool Corporation, Benton Harbor, Michigan.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on November 22, 2016, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on Wednesday, December 7, 2016, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 29, 2016. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on December 1, 2016, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

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[1] For purposes of this investigation, the Department of Commerce has defined "large residential washers" as "all automatic clothes washing machines, regardless of the orientation of the rotational axis, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm), except as noted below.

Also covered are certain parts used in large residential washers, namely: (1) All cabinets, or portions thereof, designed for use in large residential washers; (2) all assembled tubs designed for use in large residential washers which incorporate, at a minimum: (a) A tub; and (b) a seal; (3) all assembled baskets designed for use in large residential washers which incorporate, at a minimum: (a) A side wrapper; (b) a base; and (c) a drive hub; and (4) any combination of the foregoing parts or subassemblies.

Excluded from the scope are stacked washer-dryers and commercial washers. The term "stacked washer-dryers" denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term "commercial washer" denotes an automatic clothes washing machine designed for the "pay per use" segment meeting either of the following two definitions:

(1) (a) It contains payment system electronics; (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners; or

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation, the unit cannot begin a wash cycle without first receiving a signal from a bona fide payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) Have a vertical rotational axis; (2) are top loading; (3) have a drive train consisting, inter alia, of (a) a permanent split capacitor (PSC) motor, (b) a belt drive, and (c) a flat wrap spring clutch.

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) Have a horizontal rotational axis; (2) are front loading; and (3) have a drive train consisting, inter alia, of (a) a controlled induction motor (CIM), and (b) a belt drive.

Also excluded from the scope are automatic clothes washing machines that meet all of the following conditions: (1) Have a horizontal rotational axis; (2) are front loading; and (3) have cabinet width (measured from its widest point) of more than 28.5 inches (72.39 cm)."

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is November 30, 2016. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 14, 2016. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before December 14, 2016. On January 3, 2017, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 5, 2017, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on E-Filing,* available on the Commission's Web site at *http://edis.usitc.gov,* elaborates upon the Commission's rules with respect to electronic filing.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 15, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–19729 Filed 8–17–16; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on July 19, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Vestel Elektronik Sanayi ve Ticaret A.S., Manisa, TURKEY; Ittiam Systems Inc., Plano, TX; Eutelsat SA, Paris, Cedex, FRANCE; Quatius Ltd., Kwai Chung, HONG KONG-CHINA; SPI International, Inc., New York, NY; and Amlogic (Shanghai), Ltd., Shanghai, PEOPLE'S REPUBLIC OF CHINA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on May 11, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2016 (81 FR 37212).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–19703 Filed 8–17–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Automotive Security Review Board, Inc.

Notice is hereby given that, on July 27, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Automotive Security Review Board, Inc. (''ASRB'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Aeris Communications, Inc., Santa Clara, CA; Intel Corporation, Santa Clara, CA; and Uber Technologies Inc., San Francisco, CA. The general area of ASRB's planned activity is research focused on mitigation of future automotive cybersecurity risks.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–19705 Filed 8–17–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Allseen Alliance, Inc.

Notice is hereby given that, on July 26, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), AllSeen Alliance, Inc. (''AllSeen Alliance'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Seluxit ApS, Hjulmagervej, Aalborg, DENMARK; Trend Micro, Taipei, TAIWAN; Ashiemymy Technology Limited, Croyodn, Greater London, UNITED KINGDOM; Xiamen Hualin

Electronics Co., Ltd., Torch Hi-tech District, Xiamen, PEOPLE'S REPUBLIC OF CHINA; Loewe Technologies GmbH, Kronach, GERMANY; SGS Taiwan Ltd., Wuku District, New Taipei City, TAIWAN; AT4 wireless, S.A.U., Malaga, SPAIN; and VESTEL, Manisa, TURKEY, have been added as parties to this venture.

Also, AT&T Services, Inc. (on behalf of itself and its affiliates), Atlanta, GA; CA Engineering, Draper, UT; Cisco Systems, Inc., Lawrenceville, GA; Guangdong Pisen Electronics Co. Ltd., Longgang District, Shenzhen City, PEOPLE'S REPUBLIC OF CHINA; Imagination Technologies, Sunnyvale, CA; Le Shi Zhi Xin Electronic Technology (Tianjin) Limited, Chaoyang District, Beijing, PEOPLE'S REPUBLIC OF CHINA; LiteOn Technology Corporation, New Taipei City, TAIWAN; Sproutling, San Francisco, CA; Vestel Elektronik, Sanayi ve Ticaret A.S., Manisa, TURKEY; Weaved, Inc., Palo Alto, CA; Things.Expert LLC, Doral, FL; Hubble Connected Limited, Victoria, British Columbia, CANADA; DAWON DNS Co., Ltd., Gwangmyeoung-si, Gyeonggi-do, KOREA; Playtabase, Minneapolis, MN; Connectuity, Louisville, KY; CenturyLink, Denver, CO; People Power Company, Palo Alto, CA; Seed Labs, San Francisco, CA; Carvoyant, Inc., Odessa, FL; iGloo Software Pty Ltd., West Melbourne, AUSTRALIA; Waygum, Inc., Dublin, CA; Unizyx Holding Corporation, Hsinchu, TAIWAN; Infobright Inc., Toronto, Ontario, CANADA; Hisilicon Technologies Co., Ltd., Longgang District, Shenzhen, PEOPLE'S REPUBLIC OF CHINA; ZTE Corporation, Shanghai, PEOPLE'S REPUBLIC OF CHINA; and CastleOS Software, LLC, Johnston, RI, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and AllSeen Alliance intends to file additional written notifications disclosing all changes in membership.

On January 29, 2014, AllSeen Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 4, 2014 (79 FR 12223).

The last notification was filed with the Department on May 9, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2016 (81 FR 37213).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–19706 Filed 8–17–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Telemanagement Forum

Notice is hereby given that, on July 18, 2016, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), TeleManagement Forum ("The Forum") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following parties have been added as members to this venture: OgilvyOne Worldwide S.A. c/o FIWARE, Madrid, SPAIN; John P. Reilly Sole Trader, Plano, TX; The Open Group, San Francisco, CA; IoT connctd GmbH, Berlin, GERMANY; TWINT AG, Bern, SWITZERLAND; Blekinge Institute of Technology, Karlskrona, SWEDEN; Eclipse Foundation, Ottawa, CANADA; FTTH Council Asia-Pacific, Singapore, SINGAPORE; Philippe Imoucha, Aix-en-Provence, FRANCE; Safe Data Matters, Cork, IRELAND; Bristol University, Bristol, UNITED KINGDOM; The Cure Parkinsons Trust, London, UNITED KINGDOM; RoboFold Ltd., London, UNITED KINGDOM; Dunasys, Nanterre, FRANCE; Clarebourne Consultancy Ltd., Bristol, UNITED KINGDOM; Fluxicon, Eindhoven, NETHERLANDS; EASIS CONSULTING, Paris, FRANCE; Xynexis International, Jakarta, INDONESIA; Telecom Personal (Paraguay), Asuncion, PARAGUAY; MD Healthcare Consultants Ltd., Salford, UNITED KINGDOM; Icertis, Inc., Bellevue, WA; Polkomtel S.A. (PLUS), Warsaw, POLAND; ZDSL.com, Kuala Lumpur, MALAYSIA; Lotus Innovations, LLC, Irvine, CA; Qiy Foundation, Boxtel, NETHERLANDS; Docomo Pacific, Tamuning, GUAM; SP Telecommunications Pte Ltd., Singapore, SINGAPORE; HHB SOLUTIONS LIMITED, Hong Kong, PEOPLE'S REPUBLIC OF CHINA; Cellos Software Limited, Melbourne, AUSTRALIA; US Cellular Corporation, Chicago, IL; CheckNET GmbH, Munich, GERMANY; Millicom Tigo Paraguay, Asuncion, PARAGUAY; Bring Labs, Lisbon, PORTUGAL; RMC Consulting COM TR, Istanbul, TURKEY; Vodafone Netherlands, Maastricht, NETHERLANDS; Panamax Inc., New York, NY; Gaia Smart Cities Solutions Pvt Ltd., Mumbai, INDIA; GCI, Anchorage, AK; EY Global Services Limited, London, UNITED KINGDOM; PricewaterhouseCoopers LLP—Edmonton, Toronto, CANADA; and Pole Star, London, UNITED KINGDOM.

Also, the following members have changed their names: Mint Systems Limited to BridgeWorx Ltd., Brighton, UNITED KINGDOM; Ascom Deutschland GmbH, Systems & Solutions to Axino Solutions Group, Aachen, GERMANY; TeliaSonera AB to Telia Company, Stockholm, SWEDEN; Mobistar to Orange Belgium NV/SA, Brussels, BELGIUM; Ace Group Holdings, Inc., to CHUBB, New York, NY; FIWARE to OgilvyOne Worldwide S.A. c/o FIWARE, Madrid, SPAIN; Robots to RoboFold Ltd., London, UNITED KINGDOM; and Bring Global to Bring Labs, Lisbon, PORTUGAL.

In addition, the following parties have withdrawn as parties to this venture: Alcatel-Lucent, Velizy, FRANCE; Banan IT FZ–LLC, Dubai, UAE; bit2win, Rome, ITALY; Broadpeak, Rennes, FRANCE; Cardinality, London, UNITED KINGDOM; Croatian Telecom-HT, Zagreb, CROATIA; cVidya Networks Ltd., Herzliya, ISRAEL; DayBlink Consulting, LLC, Vienna, VA; drop D, Quito, ECUADOR; Eir, Dublin, IRELAND; Etisalat UAE, Abu Dhabi, UNITED ARAB EMIRATES; Fiberblaze, New York, NY; Fornax ICT Kft., Budapest, HUNGARY; Intersec Group, Paris, FRANCE; Magyar Telekom, Budapest, HUNGARY; MEASAT Broadcast Network Systems Sdn Bhd (MBNS–Astro), Kuala Lumpur, MALAYSIA; MTN Ghana, Accra, GHANA; OJSC "VimpelCom," Moscow, RUSSIA; Samsung Electronics Co., Suwon, SOUTH KOREA; Scarlet S.A, Evere, BELGIUM; Servicios Axtel, SAB, San Pedro Garza Garcia, MEXICO; SML Technologies, Jakarta, INDONESIA; SourceConnect, Chicago, IL; Thomson Video Networks, Cesson-Sévigné, FRANCE; T-Mobile Austria GmbH, Vienna, AUSTRIA; T-Mobile Nederland BV, The Hague, NETHERLANDS; T-Slovak Telekom, a.s., Bratislava, SLOVAKIA; TTNet A.S., Istanbul, TURKEY; Turkcell Iletisim Hiz A.S., Istanbul, TURKEY; UNITEL S.A., Luanda, ANGOLA; Virtual Clarity Ltd., London, UNITED KINGDOM; Wisdom

Networks Co., Ltd., Tokyo, JAPAN; and Xura, Ra'anana, ISRAEL.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on April 25, 2016. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2016 (81 FR 37213).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2016–19691 Filed 8–17–16; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 16–057]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, September 15, 2016, 2:30 p.m.–4:30 p.m., Eastern Daylight Time.

ADDRESSES: This meeting will take place telephonically. Any interested person may call the USA toll free conference call number 888–790–3253, passcode 4030394, to participate in this meeting by telephone.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov.*

The agenda for the meeting includes the following topics:

—Earth Science Program Annual Performance Review According to the Government Performance and Results Act Modernization Act.

It is imperative that this meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2016–19734 Filed 8–17–16; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before September 19, 2016 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NCUA, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.gov* and (2) NCUA PRA Clearance Officer, 1775 Duke Street, Alexandria, VA 22314–3428 or email at *PRAComments@ncua.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by emailing *PRAComments@ncua.gov* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0067.

Type of Review: Revision of a currently approved collection.

Title: Corporate Credit Union Monthly Call Report.

Form: Form 5310.

Abstract: NCUA is modifying the instrument for collecting call report data from corporate credit unions. This information is currently collected through a standalone application that requires manual input of data by respondents. NCUA is updating its systems to allow this information to be provided through an online portal in a way that allows respondents to automate the submission of this data. This will significantly reduce the burden associated with this collection. Through this action, the NCUA is also combining two currently approved collections—the monthly call report (OMB Number 3133–0067) and the annual report of officials (OMB Number 3133–0053). These collections will both be submitted through the same online portal and the combination of the two collections under a single control number is consistent with the treatment of this data for natural person credit unions (OMB Number 3133–0004).

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Annual Burden Hours: 588.

By Gerard Poliquin, Secretary of the Board, the National Credit Union Administration, on August 11, 2016.

Dated: August 11, 2016.

Troy S. Hillier,

NCUA PRA Clearance Officer.

[FR Doc. 2016–19500 Filed 8–17–16; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0198]

Revisions to Design of Structures, Components, Equipment, and Systems Guidance for NRC Staff

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan—final section revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a final revision to two sections in Chapter 3, "Design of Structures, Components, Equipment, and Systems," of NUREG–0800, "Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition." The revisions to these Standard Review Plan (SRP) sections reflect no changes in staff position; rather they clarify the original intent of these SRP sections using plain language throughout in accordance with the NRC's Plain Writing Action Plan. Additionally, these

revisions reflect operating experience, lessons learned, and updated guidance since the last revision, and address the applicability of regulatory treatment of non-safety systems where appropriate.

DATES: The effective date of this Standard Review Plan (SRP) update is September 19, 2016.

ADDRESSES: Please refer to Docket ID NRC–2015–0198 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0198. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the "Availability of Documents" section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Mark Notich, telephone: 301–415–3053; email: *Mark.Notich@nrc.gov;* or Nishka Devaser, telephone: 301–415–5196; email: *Nishka.Devaser@nrc.gov;* both are staff members of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Background

The staff received no comments on the proposed revisions. The staff is issuing the sections in final form for use. There have been no significant changes made to the sections since being issued in proposed form for public comment. An incorrect statement which stated that the SRP provisions only apply to reviews of applications docketed 6 months or more after the date of issuance was removed. Details of specific changes between current SRP sections and the revised sections issued here are included at the end of each of the revised sections themselves, under the "Description of Changes," subsections.

The Office of New Reactors and the Office of Nuclear Reactor Regulation are revising these sections from their current revisions. Details of specific changes in the proposed revisions are included at the end of each of the proposed sections.

The changes to these SRP sections reflect current NRC staff review methods and practices based on lessons learned from the NRC's reviews of design certification and combined license applications completed since the last revision of this chapter.

II. Backfitting and Finality Provisions

Issuance of these revised SRP sections does not constitute backfitting as defined in § 50.109 of title 10 of the *Code of Federal Regulations* (10 CFR), "Backfitting," (the Backfit Rule) or otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The NRC's position is based upon the following considerations.

1. The SRP positions do not constitute backfitting, inasmuch as the SRP is internal guidance directed at the NRC staff with respect to their regulatory responsibilities.

The SRP provides guidance to the NRC staff on how to review an application for the NRC's regulatory approval in the form of licensing. Changes in internal NRC staff guidance are not matters for which either nuclear power plant applicants or licensees are protected under either the Backfit Rule or the issue finality provisions of 10 CFR part 52.

2. The NRC staff has no intention to impose the SRP positions on current licensees and regulatory approvals either now or in the future.

The NRC staff does not intend to impose or apply the positions described in the SRP to existing (already issued) licenses and regulatory approvals. Therefore, the issuance of a final SRP—even if considered guidance that is within the purview of the issue finality provisions in 10 CFR part 52—need not be evaluated as if it were a backfit or as being inconsistent with issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP on holders of already issued licenses in a manner which does not provide issue finality as described in the applicable issue finality provision, then the NRC staff must make the showing as set forth in the Backfit Rule or address the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. Backfitting and issue finality do not—with limited exceptions not applicable here—protect current or future applicants.

Applicants and potential applicants are not, with certain exceptions, protected by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions discussed in the next paragraph—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants.

The exceptions to the general principle are applicable whenever an applicant references a 10 CFR part 52 license (*e.g.,* an early site permit) and/or NRC regulatory approval (*e.g.,* a design certification rule) with specified issue finality provisions. The NRC staff does not, at this time, intend to impose the positions represented in the SRP in a manner that is inconsistent with any issue finality provisions. If, in the future, the NRC staff seeks to impose a position in the SRP in a manner which does not provide issue finality as described in the applicable issue finality provision, then the staff must address the criteria for avoiding issue finality as described in the applicable issue finality provision.

III. Congressional Review Act

In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

IV. Availability of Documents

The ADAMS accession numbers for the revised sections are available in ADAMS under the following accession numbers:

Document	ADAMS Accession No.
SRP Section 3.2.1, "Seismic Classification," Revision 3	ML16084A812
SRP Section 3.2.2, "System Quality Group Classification," Revision 3	ML16084A884

Dated at Rockville, Maryland, this 11th day of August, 2016.

For the Nuclear Regulatory Commission.

Joseph Colaccino,

Chief, New Reactor Rulemaking and Guidance Branch, Division of Engineering, Infrastructure, and Advanced Reactors, Office of New Reactors.

[FR Doc. 2016–19636 Filed 8–17–16; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

South Carolina Electric & Gas Company and South Carolina Public Service Authority; Virgil C. Summer Nuclear Station Units 2 and 3

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: South Carolina Electric & Gas Company (SCE&G) and South Carolina Public Service Authority (Santee Cooper) are the holders of Combined License (COL) Nos. NPF–93 and NPF–94, which authorize the construction and operation of Virgil C. Summer Nuclear Station, Units 2 and 3 (VCSNS 2 & 3), respectively.[1] The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption from the requirement that applicants for an operator license at VCSNS 2 & 3 provide evidence that the applicant, as a trainee, has successfully manipulated the controls of either the facility for which the license is sought or a plant-referenced simulator (PRS). Applicants will instead use a Commission-approved simulation facility for VCSNS 2 & 3.

DATES: This exemption is effective as of August 18, 2016.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "ADAMS Public Documents" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced. The facility licensee's Commission-Approved Simulation Facility application and exemption request was submitted to the NRC by letters dated April 21, 2016 (ADAMS Accession No. ML16112A256) and June 8, 2016 (ADAMS Accession No. ML16161A030), respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Paul Kallan, Office of New Reactors, U.S Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2809; email: *Paul.Kallan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The simulation facility for VCSNS 2 & 3 comprises two AP1000 full scope simulators, which are designated "2A" and "2B". Both simulators are referenced to VCSNS Unit 2 and are intended to be maintained functionally identical. The simulators are licensed to conform to the requirements of ANSI/ANS–3.5–1998, "Nuclear Power Plant Simulation Facilities for Use in Operator Training and License Examination," as endorsed by Revision 3 of NRC Regulatory Guide 1.149, "Nuclear Power Plant Simulation Facilities for Use in Operator Training and License Examinations."

On August 3, 2016, the Commission-approved the simulation facility under § 55.46(b) of title 10 of the *Code of Federal Regulations* (10 CFR) for use in the administration of operating tests after finding that the simulation facility and its proposed use are suitable for the conduct of operating tests for the facility licensee's reference plant under 10 CFR 55.45(a). The safety evaluation is available in ADAMS under Accession No. ML16203A116.

II. Request/Action

Section 55.31(a)(5) states that to apply for an operator's or senior operator's license the applicant shall provide evidence that the applicant, as a trainee, has successfully manipulated the controls of either the facility for which a license is sought or a PRS that meets the requirements of 10 CFR 55.46(c). However, the VCSNS 2 & 3 simulators have not yet been found to meet the NRC's requirements for PRSs at 10 CFR 55.46(c) because the design activities required by the AP1000 design certification to establish the human factors engineering design for the main control room are incomplete.

The SCE&G requested an exemption from 10 CFR 55.31(a)(5) on June 8, 2016 (ADAMS Accession No. ML16161A030), requesting that the Commission-approved simulation facility be approved in lieu of a PRS for the performance of significant control manipulations. The Commission has determined that an exemption is warranted from the requirement in 10 CFR 55.31(a)(5) that the applicant for a VCSNS 2 & 3 operator's license use a PRS or the facility to provide evidence of having successfully manipulated the controls of the facility. In lieu of that requirement, the Commission will accept evidence that the applicant, as a trainee, has successfully manipulated the controls of the VCSNS 2 & 3 Commission-approved simulation facility meeting the requirements of 10 CFR 55.46(b).

The staff's evaluation of this action follows.

III. Discussion

Pursuant to 10 CFR 55.11, the Commission may, upon application by an interested person, or upon its own initiative, grant exemptions from the requirements of 10 CFR part 55 as it determines are (1) authorized by law, (2) will not endanger life or property, and (3) are otherwise in the public interest.

---

[1] SCE&G is authorized by the VCSNS Owners to exercise responsibility and control over the physical construction, operation, and maintenance of the facility, and will be referred to as "facility licensee."

1. *The exemption is authorized by law.*

Exemptions are authorized by law where they are not expressly prohibited by statute or regulation. A proposed exemption is implicitly "authorized by law" if all of the conditions listed therein are met (*i.e.,* will not endanger life or property and is otherwise in the public interest) and no other provision prohibits, or otherwise restricts, its application. As discussed in this section of the evaluation, no provisions in law restrict or prohibit an exemption to the requirements concerning control manipulations.

The regulations in 10 CFR part 55 implement Section 107 of the Atomic Energy Act of 1954, as amended (AEA), which sets requirements upon the Commission concerning operators' licenses and states, in part, that the Commission shall (1) "prescribe uniform conditions for licensing individuals as operators of any of the various classes of . . . utilization facilities licensed" by the NRC and (2) "determine the qualifications of such individuals."

These requirements in the AEA do not expressly prohibit exemptions to the portion of 10 CFR 55.31(a)(5) that requires the use of a PRS or the facility for control manipulations. Further, as explained below, the exemption has little impact on the uniformity of licensing conditions, and little impact on the determinations of qualifications.

In a letter from Ronald A. Jones, Vice President, New Nuclear Operations, SCE&G to the NRC dated April 21, 2016 (ADAMS Accession No. ML16112A256), the facility licensee requested Commission approval of the simulation facility for VCSNS 2 & 3 to support the administration of operator licensing examinations.

The staff's evaluation of the simulation facility for VCSNS 2 & 3 concluded that the simulation facility for VCSNS 2 & 3 provides the necessary reactor physics, thermal hydraulic, and integrated system modeling of the reference plant (*i.e.,* the AP1000 plant as described in the design certification) necessary to perform operator license examinations. This modeling includes the predicted core performance instead of the most recent core load. Because VCSNS 2 & 3 is under construction, plant experience from the most recent core load is not available. Predicted core performance is acceptable because operating experience with core design has demonstrated that the reactor physics and thermal hydraulic characteristics associated with a core design can be accurately predicted. As described in the staff's evaluation of the simulation facility for VCSNS 2 & 3, simulator performance testing has demonstrated that the core performance predictions have been accurately modeled.

The staff's evaluation of the simulation facility for VCSNS 2 & 3 concluded that the simulation facility for VCSNS 2 & 3 is capable of providing a wide range of scenarios that address the 13 items in 10 CFR 55.45(a) without procedural exceptions, simulator performance exceptions, or deviation from the approved examination scenario sequence. Control manipulations are a subset of actions included in these scenarios and have a defined scope that is significantly less than an examination scenario. Because of the reduced scope, the presence of existing simulator discrepancies in any training scenarios that provide applicants with the opportunity to provide the required control manipulations is even less likely as compared to operating tests. Therefore, there exists a large variety of control manipulations that can be completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence.

Further, the conditions under which the applicants are licensed will be essentially unchanged, and the usage of the VCSNS 2 & 3 Commission-approved simulation facility in place of a PRS will not significantly change how the Commission determines the qualifications of applicants. Under the exemption, 10 CFR 55.31(a)(5) will continue to require the applicant to perform, at a minimum, five significant control manipulations that affect reactivity or power level.

For purposes of control manipulations, the staff has already determined in its safety evaluation documenting Commission-approval of the simulation facility for VCSNS 2 & 3 (ADAMS Accession No. ML16203A116) that the facility sufficiently models the systems of the reference plant, including the operating consoles, and permits use of the reference plant's procedures. Facility licensees that propose to use a PRS to meet the control manipulation requirements in 10 CFR 55.31(a)(5) must ensure that:

> (i) The plant-referenced simulator utilizes models relating to nuclear and thermal-hydraulic characteristics that replicate the most recent core load in the nuclear power reference plant for which a license is being sought; and
>
> (ii) Simulator fidelity has been demonstrated so that significant control manipulations are completed without procedural exceptions, simulator performance exceptions, or deviation from the approved training scenario sequence.

In its safety evaluation documenting Commission approval of the VCSNS 2 & 3 simulation facility, the staff found that the VCSNS 2 & 3 Commission-approved simulation facility meets these criteria and, therefore, is equivalent to a PRS with respect to performing control manipulations. Thus, the simulation facility for VCSNS 2 & 3 is an acceptable simulation facility for meeting the experience requirements in 10 CFR 55.31(a)(5).

Accordingly, because a PRS and the VCSNS 2 & 3 Commission-approved simulation facility are essentially the same with respect to control manipulations, an exemption from 10 CFR 55.31(a)(5) allowing the use of the VCSNS 2 & 3 Commission-approved simulation facility in lieu of a PRS or the facility for control manipulations will still satisfy the applicable statutory requirements of the AEA that the Commission prescribe uniform conditions for licensing individuals as operators and determine the qualifications of operators.

The acceptability of the VCSNS 2 & 3 simulation facility with respect to the significant control manipulations required by 10 CFR 55.31(a)(5) is additionally assured by the fact that SCE&G performs scenario-based testing (SBT) for scenarios used to satisfy the control manipulation requirement. To ensure that simulator discrepancies and/or procedure issues do not affect control manipulations, SCE&G, as a standard practice in accordance with its licensing basis, implements SBT in accordance with Revision 1 of Nuclear Energy Institute (NEI) 09–09, "Nuclear Power Plant-Referenced Simulator Scenario Based Testing Methodology."[2] The NRC staff endorsed NEI 09–09 in Regulatory Guide 1.149, Revision 4. NEI 09–09 describes SBT as follows:

> Key to the SBT Methodology is parallel testing and evaluation of simulator performance while instructors validate simulator training and evaluation scenarios. As instructors validate satisfactory completion of training or evaluation objectives, procedure steps and scenario content, they are also ensuring satisfactory simulator performance in parallel, not series, making the process an "online" method of evaluating simulator performance. Also critical is the assembly of the SBT package—the collection of a marked-up scenario,

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[2] By letter dated April 21, 2016 (ADAMS Accession No. ML16112A256), SCE&G stated that it conforms to Revision 1 of NEI 09–09.

appropriate procedures, monitored parameters, an alarm summary and an affirmation checklist that serves as the proof of the robust nature of this method of performance testing. Proper conduct of the SBT Methodology is intended to alleviate the need for post-scenario evaluation of simulator performance since the performance of the simulator is being evaluated (*i.e.*, compared to actual or predicted reference plant performance) during the parallel conduct of SBT and scenario validation.

Therefore, since the Commission-approved simulation facility for VCSNS 2 & 3 conforms to the same control manipulation requirements as a PRS, the NRC staff will continue to comply with its requirements governing uniformity and operator qualifications.

Accordingly, for the reasons above, and in light of the reasons discussed in Sections 2 and 3 below, the Commission concludes that the exemption is authorized by law.

2. *The exemption will not endanger life or property.*

As discussed above, as part of its review and approval of SCE&G's request for a VCSNS 2 & 3, Commission-approved simulation facility the staff found that the simulator demonstrates expected plant response to operator input and to normal, transient, and accident conditions to which the simulator has been designed to respond. Further, the staff found that the simulator is designed and implemented so that (i) it is sufficient in scope and fidelity to allow conduct of the evolutions listed in 10 CFR 55.45(a)(1) through (13), and 10 CFR 55.59(c)(3)(i)(A) through (AA), as applicable to the design of the reference plant and (ii) it allows for the completion of control manipulations for operator license applicants. Accordingly, the staff concludes that the Commission-approved simulation facility for VCSNS 2 & 3 will replicate reference plant performance for the significant control manipulations required by 10 CFR 55.31(a)(5).

Because the VCSNS 2 & 3 Commission-approved simulation facility satisfactorily replicates reference plant performance with respect to control manipulations, the staff concludes that there is no basis to find endangerment of life or property as a consequence of the exemption.

3. *The exemption is otherwise in the public interest.*

The Commission's values guide the NRC in maintaining certain principles as it carries out regulatory activities in furtherance of its safety and security mission. These principles focus the NRC on ensuring safety and security while appropriately considering the interests of the NRC's stakeholders, including the public and licensees. These principles include Independence, Openness, Efficiency, Clarity, and Reliability. Whether granting an exemption to the requirement to use a PRS or the facility and allowing use of a Commission-approved simulation facility for VCSNS 2 & 3 would be in the public interest depends on the consideration and balancing of the foregoing factors.

Concerning Efficiency, the public has an interest in the best possible management and administration of regulatory activities. Regulatory activities should be consistent with the degree of risk reduction they achieve. Where several effective alternatives are available, the option which minimizes the use of resources should be adopted. Regulatory decisions should be made without undue delay. As applied to using a Commission-approved simulation facility rather than a PRS or the facility, in light of the Commission's findings that the capabilities of the VCSNS 2 & 3 Commission-approved simulation facility are equivalent to those of a PRS for control manipulations, the use of the VCSNS 2 & 3 Commission-approved simulation facility provides both an effective and an efficient alternative for the VCSNS 2 & 3 operator license applicant to gain the required experience.

Concerning Reliability, once established, regulations should be perceived to be reliable and not unjustifiably in a state of transition. Regulatory actions should always be fully consistent with written regulations and should be promptly, fairly, and decisively administered so as to lend stability to the nuclear operational and planning processes. Here, where the staff has already found that the VCSNS 2 & 3 Commission-approved simulation facility is equivalent to a PRS with respect to control manipulations, the substantive requirements upon the operator license applicant are unchanged with the granting of the exemption. Further, the public has an interest in reliability in terms of the stability of the nuclear planning process. This exemption aids planning by allowing operator license applicants to complete their applications sooner, with the underlying requirements essentially unchanged, and could result in licensing decisions being made earlier than would be possible if the applicants had to wait for a PRS to be available.

Concerning Clarity, there should be a clear nexus between regulations and agency goals and objectives whether explicitly or implicitly stated. Agency positions should be readily understood and easily applied. For the reasons explained in the NRC's evaluation of the VCSNS 2 & 3 Commission-approved simulation facility, the Commission-approved simulation facility is sufficient for administering operating tests, and is able to meet the requirements of a PRS with respect to control manipulations. The exemption accordingly recognizes that the capabilities of the VCSNS 2 & 3 Commission-approved simulation facility are suitable to accomplish the regulatory purpose underlying the requirements of 10 CFR 55.31(a)(5).

The exemption is also consistent with the principles of Independence and Openness; the Commission has independently and objectively considered the regulatory interests involved and has explicitly documented its reasons for issuing the exemption.

Accordingly, on balance the Commission concludes that the exemption is in the public interest.

Conclusion

The Commission concludes that the exemption is (1) authorized by law, and (2) will not endanger life or property, and (3) is otherwise in the public interest. Therefore, in lieu of the requirements of 10 CFR 55.31(a)(5), the Commission will accept evidence that the applicant for a VCSNS 2 & 3 operator license has completed the required manipulations on the VCSNS 2 & 3 Commission-approved simulation facility that meets the requirements of 10 CFR 55.46(b), rather than on a PRS or the facility.

Expiration and Limitation

This exemption will expire when a VCSNS 2 & 3 PRS that meets the requirements in 10 CFR 55.46(c) is available. Furthermore, this exemption is subject to the condition that the Commission-approved simulation facility for VCSNS 2 & 3 continues to model the reference plant with sufficient scope and fidelity, in accordance with 10 CFR 55.46(c) and (d).

Environmental Consideration

This exemption allows the five significant control manipulations required by 10 CFR 55.31(a)(5) to be performed on the VCSNS 2 & 3 Commission-approved simulation facility that has been approved for the administration of operating tests instead of on the VCSNS 2 & 3 facility or a PRS.

For the following reasons, this exemption meets the eligibility criteria of 10 CFR 51.22(c)(25) for a categorical exclusion. There is no significant hazards consideration related to this exemption. The staff has also determined that the exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite; that there is no significant increase in individual or cumulative public or occupational radiation exposure; that there is no significant construction impact; and that there is no significant increase in the potential for or consequences from radiological accidents. Finally, the requirements to which the exemption applies involve qualification requirements. Accordingly, the exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of August 18, 2016.

IV. Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 55.11, issuing this exemption from the requirements in 10 CFR 55.31(a)(5) is authorized by law and will not endanger life or property and is otherwise in the public interest. The Commission will accept evidence of control manipulations performed on the VCSNS 2 & 3 Commission-approved simulation facility instead of on the VCSNS 2 & 3 facility or a PRS.

Dated at Rockville, Maryland, this 11th day of August 2016.

For the Nuclear Regulatory Commission.

Francis M. Akstulewicz,

Director, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2016–19730 Filed 8–17–16; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

Sunshine Act Meetings; Amended Notice

This is an amendment to the Sunshine Act meeting notice of the Postal Regulatory Commission published in the **Federal Register** of January 7, 2016 (81 FR 815). The amendment is being made to update the agenda for the September 1, 2016 meeting.

TIMES AND DATES: September 1, 2016, at 11 a.m.

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PORTIONS OPEN TO THE PUBLIC:

1. Report from the Office of Public Affairs and Government Relations.
2. Report from the Office of the General Counsel.
3. Report from the Office of Accountability and Compliance.
4. Presentation to the Commission on the United States Postal Service Stamp Program by Mary Anne Penner, Director of Stamp Services, United States Postal Service. (September 1, 2016 Meeting only)
5. Commissioners Vote to designate new Vice-Chairman of the Commission pursuant to 39 U.S.C. 502(e). (December 1, 2016 Meeting only)

PORTIONS OPEN TO THE PUBLIC:

6. Discussion of pending litigation.

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By direction of the Commission.

Stacy L. Ruble,

Secretary.

[FR Doc. 2016–19880 Filed 8–16–16; 4:15 pm]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective Date:* August 18, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 12, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 26 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2016–177, CP2016–256.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–19693 Filed 8–17–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 18, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 12, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 234 to Competitive Product List.* Documents are available at *www.prc.gov*, Docket Nos. MC2016–181, CP2016–260.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–19696 Filed 8–17–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 18, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 12, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 233 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–179, CP2016–258.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–19704 Filed 8–17–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 18, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 12, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 232 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–178, CP2016–257.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–19707 Filed 8–17–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 18, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 12, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Express Contract 41 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–180, CP2016–259.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–19695 Filed 8–17–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 18, 2016.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 12, 2016, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add First-Class Package Service Contract 60 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2016–176, CP2016–255.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–19694 Filed 8–17–16; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Privacy Act of 1974, Computer Matching Program—United States Postal Service and the Defense Manpower Data Center, Department of Defense

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program—United States Postal Service and the Defense Manpower Data Center, Department of Defense.

SUMMARY: The United States Postal Service® (USPS®) plans to continue to participate as a recipient agency in a computer matching program with the Defense Manpower Data Center (DMDC), Department of Defense (DoD) as the source agency. The purpose of this program, and associated computer matching agreement (Agreement), is to enable the DMDC to determine whether members of the Ready Reserve, Standby Reserve, or the Retired Reserve of the Armed Forces of the United States are eligible for the TRICARE Reserve Select Program (TRS) or TRICARE Retired Reserve Program (TRR). Specifically, this program is intended to identify TRS and TRR recipients who are eligible for, or who are receiving, health coverage under Federal Employee Health Benefits (FEHB), and on the basis of these findings and subsequent investigation, to terminate TRS and TRR benefits if appropriate.

DATES: The matching program will begin on the effective date of the Agreement. The effective date is the expiration of a 40-day review period by Office of Management and Budget (OMB) and Congress or 30 days after the date of publication of this notice, whichever is later. The matching program will be valid for a period of 18 months after this date.

ADDRESSES: Written comments on this proposal should be mailed or delivered to the Privacy and Records Office, United States Postal Service, 475 L'Enfant Plaza SW., Room 9431, Washington, DC 20260. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy Officer, (202) 268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: The Postal Service and DMDC have agreed to conduct a computer matching program under subsection (o) of the Privacy Act of 1974, 5 U.S.C. 552a. The Postal Service is undertaking this initiative to assist the DMDC in fulfilling a mandate issued under section 706 of the John Warner National Defense Authorization Act of 2007 (NDAA of 2007) (Pub. L. 109–364), and section 705 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). These Acts exclude from program coverage those Selected Reserve and Retired Reserve members who are also eligible for Federal Employee Health Benefits (FEHB) under chapter 89 of title 5, U.S. Code.

The Parties to this Agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining the information needed by the DMDC to identify individuals ineligible to continue enrollment in the TRS and the TRR programs. If this semiannual identification is not accomplished by computer matching, but instead done manually, the burdensome process would be cost prohibitive and it is possible that not all individuals would be identified.

The Postal Service has agreed to assist the DMDC in its efforts to identify individuals who are not entitled to receive health coverage under TRS or TRR. Currently, upon initial enrollment into TRS or TRR, service members must certify that they are not eligible for FEHB in order to purchase TRS or TRR health care insurance coverage. The DMDC will provide semi-annual data to the Postal Service to be used in the match, including Social Security Numbers, names, and dates of birth for TRS-enrolled Selected Reservists or TRR-enrolled Retired Reservists. There are no other consolidated data sources available containing this type of information.

The DMDC will provide the Postal Service an electronic file containing personally identifiable information from system of records DMDC 02, "Defense Enrollment Eligibility Reporting System (DEERS)" as amended by 80 FR 68304 (November 4, 2015).The Postal Service will compare the DMDC electronic file with its payroll files from system of records USPS 100.400, Personnel Compensation and Payroll Records, as amended by 80 FR11241 (March 2, 2015), routine use 7. Postal Service employee matches will be provided to the DMDC with the FEHB program eligibility and federal employment information necessary to either verify the eligibility to enroll or verify the continuing eligibility of enrolled service members.

The DMDC will update System of Record DMDC 02 with the USPS FEHB eligibility information and will provide the matching results to the responsible Reserve Component. The Reserve Component is responsible for verifying the information and making final determinations as to positive identification and eligibility for TRS or TRR benefits.

This computer match may have an adverse effect on individuals that are identified from the match. After verifying the accuracy of the matching information and determining ineligibility for coverage under TRS or TRR, the DoD will immediately notify individuals of their ineligibility for TRS or TRR and inform them at the same time about procedures for enrolling in FEHB. This process will help to alleviate or minimize any break in medical coverage.

The privacy of employees will be safeguarded and protected. The Postal Service will manage all data in strict accordance with the Privacy Act and the terms of the matching agreement. Any verified data that is maintained will be managed within the parameters of Privacy Act System of Record USPS 100.400, Personnel Compensation and Payroll Records.

The Postal Service will provide 40 days of advance notice to Congress and postal employee unions for each subsequent matching agreement. Set forth below are the terms of the matching agreement (exclusive of attachments), which provide information required by the Privacy Act of 1974, as amended (5 U.S.C. 552a); OMB Final Guidance Interpreting the Provisions of Public law 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989), and OMB Circular No. A–130, Appendix I, 65 FR 77677 (December 12, 2000)).

Stanley F. Mires,

Attorney, Federal Compliance.

COMPUTER MATCHING AGREEMENT BETWEEN THE UNITED STATES POSTAL SERVICE AND THE DEPARTMENT OF DEFENSE

DEFENSE MANPOWER DATA CENTER

A. Supersedure

This computer matching agreement supersedes all existing data exchange agreements or memorandums of understanding between the Department of Defense (DoD) and the United States Postal Service (USPS) applicable for determining the eligibility for the enrollment in premium based TRICARE health plans for Reserve Component (RC) Service members based on their eligibility for Federal Employees Health Benefits (FEHB) Program.

B. Purpose of the Computer Matching Agreement

The purpose of this agreement is to establish the conditions, safeguards, and procedures under which the USPS, an independent establishment of the executive branch of the Government of the United States, section 201 of Title 39, United States Code (U.S.C.), as the recipient agency, will receive from the DoD, the source agency, personally identifiable information pertaining to members of the Ready Reserve, Standby Reserve, and Retired Reserve of the Armed Forces of the United States. Such information will be used in a matching program for the purpose of providing the DoD with the FEHB program eligibility and Federal employment information necessary to either verify the eligibility to enroll or verify the continuing eligibility of enrolled Service members for premium based TRICARE health plans such as the TRICARE Reserve Select (TRS) Program and the TRICARE Retired Reserve (TRR) Program.

C. Legal Authority

This CMA is executed to comply with section 552a of Title 5 U.S.C., as amended (the Privacy Act of 1974), Public Law (PL) 100–503, the Computer Matching and Privacy Protection Act (CMPPA) of 1988, the Office of Management and Budget (OMB) Circular A–130, titled "Management of Federal Information Resources" at 61 **Federal Register** (FR) 6435, February 20, 1996, and OMB guidelines pertaining to computer matching at 54 FR 25818, June 19, 1989. The Postal Service is authorized to enter into this agreement in accordance with section 411 of Title 39, U.S.C.

Section 706 of PL 109–364, the John Warner National Defense Authorization Act of 2007, amended section 1076d of Title 10 U.S.C. to establish the enhanced TRS Program as of October 1, 2007. Section 705 of PL 111–84, National Defense Authorization Act for Fiscal Year 2010, amended section 1076e of Title 10 U.S.C. to establish the TRR Program as of October 29, 2009. RC Service members who have continuing eligibility for the FEHB Program pursuant to chapter 89 of Title 5 U.S.C. are not eligible to enroll, or continue an enrollment, in the TRS or the TRR Program. This agreement implements the additional validation processes needed by DoD to insure RC Service members eligible for the FEHB Program may not enroll, or may not continue a current enrollment, in the TRS or the TRR Program.

D. Definitions

1. DoD—Department of Defense
2. USPS—United States Postal Service Payroll processing unit in Eagan, MN
3. FEHB Program—Federal Employees Health Benefits Program
4. TRS Program—TRICARE Reserve Select, a premium based TRICARE military health plan for members of the Selected Reserve of the Ready Reserve of the Armed Forces of the United States
5. TRR Program—TRICARE Retired Reserve, a premium based TRICARE military health plan for members of the Retired Reserve of the Armed Forces of the United States
6. DMDC—Defense Manpower Data Center
7. DEERS—Defense Enrollment Eligibility Reporting System
8. OASD(RA)—Office of the Assistant Secretary of Defense for Reserve Affairs
9. Recipient Agency—as defined by the Privacy Act (section 552a(a)(9) of Title 5 U.S.C.), the agency receiving the records contained in a system of records from a source agency for use in a matching program. USPS is the recipient agency.
10. Source Agency—as defined by the Privacy Act (section 552a(a)(11) of Title 5 U.S.C.), the agency which discloses records contained in a system of records to be used in a matching program. DoD DMDC is the source agency.
11. DHA—the Defense Health Agency

E. Description of the Match Records

Under the terms of this matching agreement, the Defense Manpower Data Center (DMDC) will provide to USPS Payroll a file of records consisting of Social Security Number (SSN), date of birth (DOB), and the name of Service members of the Ready Reserve, Standby Reserve, and Retired Reserve of the Armed Forces of the United States. DMDC will update the Defense Enrollment Eligibility Reporting System (DEERS) record of those RC Service members with FEHB Program eligibility information from the USPS response file. The Office of the Assistant Secretary of Defense for Reserve Affairs (OASD(RA)) will be responsible for providing the verified information to the RCs to aid in processing of TRS and TRR eligibility determinations.

USPS agrees to conduct two computer matches within a calendar year of the records of RC Service members provided by DMDC matched with the information found in USPS Payroll system for permanent employees in a current pay status. USPS will validate the identification of the RC records that match with the name, SSN and DOB provided by DMDC. USPS Payroll will provide the Civilian Agency Indicator, the full FEHB Program Plan Code, a Multiple Record Indicator, and a DOB Match Indicator for those full-time employees in a current pay status. USPS Payroll will forward a response file to DMDC within 30 business days following the receipt of the initial finder file and for all subsequent files submitted.

F. Justification and Expected Results

1. Justification. Service members of the Selected Reserve who are eligible for the FEHB Program are ineligible to enroll in the TRS Program. Once a Selected Reserve Service member enrolls in the TRS Program, he or she maintains continued coverage until enrolling in a non-premium based TRICARE Program, makes a decision to terminate TRS coverage, or leaves the Selected Reserve voluntarily. Service members of the Retired Reserve who are eligible for the FEHB Program are ineligible to enroll in the TRR Program. Once a Retired Reserve member enrolls in the TRR Program, he or she maintains continued coverage until they reach age 60, voluntarily makes a decision to terminate the coverage, or enrolls in a non-premium based TRICARE Program. In order to effectively administer the program, DoD has a requirement for a verified source of FEHB Program eligibility to administer the TRS and the TRR Programs.

As a condition of enrollment into the TRS or the TRR Program, Service members certify they are not eligible for the FEHB Program. Since there is no mandatory termination date for TRS, and the mandatory termination date for TRR is age 60, DoD will validate the eligibility status of the member on a semiannual basis using data from the USPS Payroll. Absent the matching agreement, the enrolled RC population would be required to recertify their eligibility for the FEHB Program every year. This would be an onerous process for Service members as well as significant expense for DoD. The use of computer technology to transfer data between DMDC and USPS Payroll is faster and more efficient than the use of any other manual process to verify eligibility information for the FEHB Program.

2. Expected Results. The data from USPS Payroll will identify Service members who are eligible for the FEHB Program and will be used to prevent an enrollment in the TRS or the TRR Program if warranted, and also to identify the FEHB Program eligibility of currently enrolled Service members in the TRS and the TRR Program. The computer match between the USPS Payroll system and the DEERS could have an adverse impact on those individuals who lose their entitlement for TRS or TRR Program; however, it will have a positive impact as well. Service members are notified of the pending termination of their enrollment for TRS or TRR Program and provided information for enrollment in the FEHB Program. This matching process will help to insure the member has no break in medical coverage.

The derived benefits from this matching operation are primarily not quantifiable. DoD is responding to statute to exclude from the TRS and the TRR Programs Service members eligible for the FEHB Program. No savings will accrue to DoD as a result of this match. Eligible beneficiaries will receive care they are entitled to under the law.

G. Description of the Records

1. Systems of Records (SOR). DoD will use the SOR identified as DMDC 02 DoD, entitled "Defense Enrollment Eligibility Reporting Systems (DEERS) November 04, 2015, 80 FR 68304." The SSNs of RC Service members released to USPS pursuant to the routine use "6" set forth in the system notice DMDC 02 DoD. (A copy of the system notice is at Attachment 1).

2. Systems of Records (SOR). USPS Payroll provides identification of the FEHB Program status of RC Service members to validate the eligibility for the statutory requirement of the TRS and the TRR Program. Therefore, eligibility information is maintained in the SOR identified as USPS 100.400 "Personnel Compensation and Payroll Records," at 80 FR 11241, March 2, 2015, pursuant to routine use 6. (A copy of the system notice is at Attachment 2).

3. Number of Records. DMDC will submit a finder file of approximately 1.4 million records containing the SSN, name, and DOB of RC Service members for matching against the USPS Payroll, and will submit subsequent finder files on a semiannual basis thereafter. USPS Payroll will provide a reply file containing all appropriate matched responses.

4. Specified Data Elements. See Attachment 3 for a sample record format for the finder file and the reply file.

5. Operational Time Factors. DMDC will forward the initial finder file of RC Service members to USPS Payroll after the Congressional and OMB review and public comment requirements, mandated by the Privacy Act, are satisfied. USPS Payroll will provide a reply file no later than 30 business days after receipt of the initial finder file. Subsequent finder files, submitted on a semiannual basis, will receive a response within approximately 30 business days of receipt. USPS Payroll requires the reporting of the health plan semiannually: March and September, and the USPS Payroll system is usually available for use from 60 to 90 days after the end of the month. DMDC will send the finder file when the USPS Payroll system is ready to match, approximately 60 to 90 days after March and September.

H. Notice Procedures

The Defense Health Agency, (DHA)TRICARE Management Activity (TMA) will inform all TRS and TRR sponsors of computer matching activities at the time of enrollment by means of the encounter statement on the DD Form 2896–1, "RC Health Coverage Request Form." The DD Form 2896–1 is used to coordinate enrollment into the TRS Program or the TRR Program. RC Service members certify at the time of enrollment that they are not eligible for the FEHB Program. In order to provide direct notice to those Service members enrolled in TRS or TRR, DMDC will first need the information from USPS Payroll to identify TRS and TRR participants who are eligible for the FEHB Program. Once DMDC receives that information, Service members enrolled in TRS and TRR identified by the USPS Payroll matching result as FEHB eligible will be notified by their RC in writing of this status. The Service members enrolled in TRS or TRR are requested to terminate TRS or TRR coverage if the USPS Payroll information is correct or to seek RC assistance to determine their proper eligibility for the FEHB Program if the USPS Payroll data is incorrect. The RCs and DHA will also provide qualifying information for TRS and TRR to RC Service members through beneficiary handbooks, pamphlets, educational materials, press releases, briefings, and via the DHA Web site.

Any deficiencies as to direct notice to the individual for the matching program are resolved by the indirect or constructive notice that is afforded the individual by agency publication in the FR of both the:

1. Applicable routine use notice, as required by section 552(e)(11) of Title 10 U.S.C. permitting the disclosure of the FEHB Program eligibility information for DoD TRS and TRR Program eligibility purposes.

2. The proposed match notice, as required by section 552(a)(e)(12) of Title 10 U.S.C., announcing an agency's intent to conduct computer matching for verification of FEHB Program eligibility for determining eligibility for TRS and TRR Program.

I. Verification and Opportunity to Contest Findings

1. Verification. The RCs, in support of OASD(RA), are responsible for resolving FEHB Program eligibility based on the data provided by DMDC from the USPS Payroll reply file where inconsistencies exist. Any discrepancies as furnished by USPS Payroll, or developed as a result of the match, will be independently investigated and verified by the RCs, in support of OASD(RA), prior to any adverse action being taken against the individual.

2. Opportunity to Contest Findings. Based on the DoD policy the RCs agree to provide written notice to each individual whom DoD believes is no longer eligible for the TRS or the TRR Program based on the USPS Payroll file match. If the individual fails to terminate coverage or notify the RC that the information is not accurate within 30 days from the date of the notice, DoD will forward the information to the RC Program Manager for final resolution of the TRS or the TRR enrollment.

J. Retention and Disposition of Identifiable Records

The electronic data sent from DMDC to the USPS ("finder file") in accordance with this matching program will remain the property of the DMDC. The USPS will destroy this finder file after the third consecutive day that it has not been accessed, when the next finder file is received, which ever date is earlier, or upon cancellation of the agreement. The electronic data that the USPS provides to DMDC resulting from the match will remain the property of the USPS. The

DMDC will destroy this file the date of the set-up of the next finder file, within 60 days of receiving the file from USPS, which ever date is earlier, or upon cancellation of the agreement. All destruction under this section will be accomplished by shredding, burning, or electronic erasure. Notwithstanding the preceding sentences, DMDC and USPS may retain the electronic data as needed to meet evidential requirements.

K. Security and Privacy Procedures

1. DoD will comply with all Federal requirements relating to information security, information systems security, and privacy, including the Federal Information Security Modernization Act of 2014 (FISMA), the E-Government Act of 2002, OMB memoranda related to privacy, and National Institute of Standards and Technology (NIST) directives in the Special Publications (SP) 800 series (*e.g.,* NIST SP 800–53, Rev. 4, and NIST SP 800–37, Rev. 1). The Postal Service, as an independent establishment of the executive branch, is not required to follow the requirements identified in the preceding sentence, but will follow its security and privacy requirements and policies, including:

a. Title 39, Code of Federal Regulations, Part 268;

b. USPS Handbook AS–353—Guide to Privacy, the Freedom of Information Act, and Records Management (available at *http://about.usps.com/handbooks/as353/welcome.htm*);

c. USPS Response Plan for Information Breaches Involving Personal Information;

d. USPS Handbook AS–805, Information Technology and AS–805–H Cloud Security; and

e. the official USPS Privacy Policy (available at *www.usps.com/privacy*).

2. Each agency shall establish appropriate administrative, technical, and physical safeguards to assure the security and confidentiality of records and to protect against any anticipated threats or hazard to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

3. Data must be protected at the Moderate system certification criticality level according to Federal Information Processing Standards (FIPS) Publication 199, Standards for Security Categorization of Federal Information and Information Systems.

4. DoD and USPS have completed the security authorization process and the certification and accreditation process respectively within the last 3 years, using the required NIST guidance, and have an Authorization to Operate (ATO) and accreditation letter with the appropriate signatures.

5. FISMA requirements apply to all Federal contractors, organizations, or entities that possess or use Federal information, or that operate, use, or have access to Federal information systems on behalf of an agency. DoD and USPS agree that they are responsible for oversight and compliance of their own contractors and agents. DoD and USPS each reserve the right to conduct onsite inspections of any contractor or agent who has access to matched data in order to monitor compliance with FISMA regulations during the lifetime of this CMA.

6. Access to the records matched and to any records created by the match will be restricted only to those authorized employees and officials who need it to perform their official duties in connection with the uses of the information authorized in this agreement. Further, all personnel who will have access to the data matched and to any data created by the match will be advised of the confidential nature of the data, the safeguards required to protect the data, and the civil and criminal sanctions for noncompliance contained in the applicable Federal laws.

7. The records matched, and any records created by the match, will be processed under the immediate supervision and control of authorized personnel, to protect the confidentiality of the records in such a way that unauthorized persons cannot retrieve any such records by means of computer, remote terminal or other means.

8. All personnel who will have access to the records exchanged and to any records created by this exchange are advised of the confidential nature of the information, the safeguards required to protect the information and the civil and criminal sanctions for noncompliance contained in applicable Federal Laws.

9. USPS Payroll and DMDC may make onsite inspections, and may make other provisions to ensure that each agency is maintaining adequate safeguards.

10. The Data Integrity Boards (DIB) of USPS and DoD reserve the right to monitor compliance of systems security requirements, including, if warranted, the right to make onsite inspections for purposes of auditing compliance, during the life of this Agreement, or its 12 month extension period.

L. Breach Notification

1. DoD will follow PII breach notification policies and related procedures as required by OMB M–07–16, ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information'' (May 22, 2007). Using established criteria, if in the event of a breach of PII within its control, DoD determines that the risk of harm to affected individuals or to the agency requires notification to affected individuals and/or other remedies, the DoD will carry out these remedies without cost to the Postal Service. USPS and DoD will also comply with the personally identifiable information (PII) breach reporting and security requirements as required by OMB M–06–19, ''Reporting Incidents Involving Personally Identifiable Information and Incorporating the Cost for Security in Agency Information Technology Investments'', and OMB M–15–01, ''Fiscal Year 2014–2015 Guidance on Improving Federal Information Security and Privacy Management Practices''.

2. USPS will follow USPS breach notification policies and related procedures referenced in section K(1)(c): USPS Response Plan for Information Breaches Involving Personal Information.

3. USPS and DoD also agree to notify each other as soon as possible, but no later than 24 hours, after the discovery of a suspected or actual breach involving PII. All incidents involving confirmed or suspected breaches of PII must be reported by DoD to the U.S. Computer Emergency Readiness Team (US–CERT) within one hour of discovering the incident.

4. In addition, the agency experiencing the loss of PII will notify the other agency's Systems Security Contact named in Section S of this Agreement. If USPS is unable to speak with the DoD Systems Security Contact within 24 hours or if for some other reason notifying the DoD Systems Security Contact is not practicable (*e.g.,* it is outside of the normal business hours), USPS will call the DoD at 831–583–4159. If DoD is unable to speak with USPS's Systems Security Contact within 24 hours, DoD will contact the USPS Computer Incident Response Team (USPSCIRT) via email at *USPSCIRT@usps.gov.*

M. Records Usage, Duplication and Re-disclosure Restrictions

1. The matching files exchanged under this agreement remain the property of the providing agency and as described in Section J.

2. The data exchanged under this agreement will be used and accessed only for the purpose of determining eligibility for premium based TRICARE health plan such as the TRS and TRR Programs.

3. Neither DoD nor USPS will extract information from the electronic data files concerning the individuals that are described therein for any purpose not stated in this agreement.

4. Except as provided in this agreement, neither DoD nor USPS will duplicate or disseminate the data produced without the disclosing agency's permission. Neither agency shall give such permission unless the re-disclosure is required by law or essential to the conduct of the matching program. In such cases, DoD and USPS will specify in writing what records are being disclosed and the reasons that justify such disclosure.

N. Records Accuracy Assessments

DMDC estimates that at least 99% of the information in the finder file is accurate based on their operational experience. USPS Payroll is a highly reliable source of statistical data on the Postal Service workforce. However, accuracy and completeness of each data element within the individual records that comprise this aggregate are not conclusive. Findings emanating from individual records warrant further examination and verification as to its accuracy, timeliness, and completeness with the data subject.

O. Reimbursements and Funding

Expenses incurred by this data exchange will not involve any payments or reimbursements between USPS and DoD.

P. Approval and Duration of Agreement

1. This matching agreement, as signed by representatives of both agencies and approved by the respective agency's Data Integrity Boards (DIB), shall be valid for a period of 18 months from the effective date of the agreement.

2. When this agreement is approved and signed by the Chairpersons of the respective DIBs, the USPS, as the recipient agency, will submit the agreement and the proposed public notice of the match as attachments in duplicate via a transmittal letter to OMB and Congress for review. The time period for review begins as of the date of the transmittal letter.

3. USPS will forward the public notice of the proposed matching program for publication in the **Federal Register**, in accordance with section 552(a)(e)(12) of Title 5 U.S.C., the transmittal letter to OMB and Congress. The matching notice will clearly identify the record systems and category of records being used and state that the program is subject to review by the OMB and Congress. A copy of the published notice shall be provided to the DoD.

4. The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40 day review period for OMB and Congress, or 30 days after publication of the matching notice in the **Federal Register**, whichever is later. The parties to this agreement may assume OMB and Congressional concurrence if no comments are received within 40 days of the date of the transmittal letter. Both the 40 day OMB and Congressional review period, and the mandatory 30 day public comment period for the **Federal Register** publication of the notice will run concurrently.

5. This agreement may be renewed for 12 months after the initial agreement period as long as the statutory requirement for the data match exists, subject to the Privacy Act, including certification by the participating agencies to the responsible DIBs that:

a. The matching program will be conducted without change, and

b. The matching program has been conducted in compliance with the original agreement.

6. This agreement may be modified at any time by a written modification to this agreement. Any modification shall satisfy both parties and shall be approved by the DIB of each agency. In addition, any modification shall comply with the Privacy Act of 1974, as amended, as well as guidance issued by the Office of Management and Budget.

7. This agreement may be terminated at any time with the consent of both parties. If either party does not want to continue this program, it should notify the other party of its intention not to continue at least 90 days before the end of the then current period of the agreement. Either party may unilaterally terminate this agreement upon written notice to the other party requesting termination, in which case the termination shall be effective 90 days after the date of the notice or at a later date specified in the notice provided the expiration date does not exceed the original or the extended completion date of the match.

Q. Waiver of Cost Benefit Analysis

The purpose of this matching agreement is to verify eligibility of Service members enrolling or enrolled in the TRS or the TRR Programs. By statute, such coverage may be provided if the person is not eligible for the FEHB Program. FEHB Program eligibility can only be obtained from USPS, and without this information, a determination of continued eligibility cannot be made. Matching must occur regardless of the associated cost or anticipated benefits. Accordingly, the cost benefit is waived.

R. Comptroller General

The Comptroller General may have access to all records of the USPS that the Comptroller General deems necessary in order to monitor or verify compliance with the agreement.

S. Persons To Contact

The contacts on behalf of DoD are: Ms. Cindy Allard, Chief, Privacy, Civil Liberties, and Transparency Division, ODCMO, Directorate For Oversight And Compliance 4800 Mark Center Drive, Attn: DPCLTD, Mailbox# 24, Alexandria, VA 22350–1700, (703) 571–0070; Mr. Matthew Dubois, Deputy Assistant Secretary of Defense (Reserve Integration), 1500 Defense Pentagon, Washington DC 20301–1150, (703) 693–2232; Ms. Dena Colburn, DEERS Division, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Rd., Seaside, CA. 93955–6771, (831) 583–2400 x4332; DMDC Security and Incident Response: Donna Naulivou, IA Branch Chief, Defense Manpower Data Center, 400 Gigling Road, Seaside, CA 93955–6771, 831–583–4159, *donna.m.maulivou.civ@mail.mil*.The contact on behalf of USPS is: Ms. Ms. Erica Hayton, Manager Benefits and Wellness Program, 475 L'Enfant Plaza SW., Washington DC 20260–4101, (202) 268–3735, (202) 268–3337 fax, *Erica.m.hayton@usps.gov;*Ms. Christine Harris, Headquarters Payroll Accountant, 2825 Lone Oak Parkway, Eagan, MN 55121–9500, (651) 406–2128, (651) 406–1212 fax, *christine.a.harris@usps.gov;*USPS Security and Incident Response: USPS Computer Incident Response Team, 1–866–877–7247, *USPSCIRT@usps.gov*.

T. Approvals

Department of Defense Program Officials

The authorized program officials, whose signatures appear below, accept and expressly agree to the terms and conditions expressed herein, confirm that no verbal agreements of any kind shall be binding or recognized, and hereby commit their respective organizations to the terms of this agreement.

Matthew Dubois, Deputy Assistant Secretary of Defense, (Reserve Affairs); Mary Snavely-Dixon, Director, Defense Manpower Data Center

Department of Defense Data Integrity Board

The respective DIBs having reviewed this agreement and finding that it complies with applicable statutory and regulatory guidelines signify their respective approval thereof by the signature of the officials appearing below.

Mr. Joo Y. Chung, Chair, Defense Data Integrity Board, Department of Defense

United States Postal Service Program Official

Janine Castornina, (A) Chief Privacy Officer, Secretary, Data Integrity Board, United States Postal Service.

United States Postal Service Data Integrity Board

The respective DIBs having reviewed this agreement and finding that it complies with applicable statutory and regulatory guidelines signify their respective approval thereof by the signature of the officials appearing below.

Thomas J. Marshall, General Counsel and Executive Vice President, Chairperson, Data Integrity Board, United States Postal Service.

[FR Doc. 2016–19710 Filed 8–17–16; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78567; File No. SR–NASDAQ–2016–115]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rule 7018

August 12, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2016, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is proposing to amend Nasdaq Rule 7018(a) to add a new credit tier for a combination of accessing and providing liquidity in securities of all three Tapes.[3]

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com*, at Nasdaq's principal office, and at the Commission's Public Reference Room.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] There are three Tapes, which are based on the listing venue of the security: Tape C securities are Nasdaq-listed; Tape A securities are New York Stock Exchange ("NYSE")-listed; and Tape B securities are listed on exchanges other than Nasdaq and NYSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to add a new credit tier for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at $1 or more that it trades. The Exchange proposes to amend Nasdaq Rule 7018(a)(1), (2), and (3) to add a new credit tier for a combination of accessing and providing liquidity in securities of all three Tapes. Specifically, this new credit tier will be added to the Nasdaq rule book under each of Nasdaq Rule 7018(a)(1), (2), and (3) in the part entitled "Credit to member for displayed quotes/orders (other than Supplemental Orders or Designated Retail Orders) that provide liquidity".

The new credit tier will be for $0.0027 per share executed and will be available for a member (i) with shares of liquidity accessed in all securities through one or more of its Nasdaq Market Center market participant identifiers ("MPIDs") that represent more than 0.65% of consolidated volume ("Consolidated Volume") during the month, and (ii) with shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represent more than 0.10% of Consolidated Volume during the month.

As a general principle, the Exchange chooses to offer credits to members in return for market improving behavior. Under Rule 7018(a), the various credits the Exchange provides for members require them to significantly contribute to market quality by accessing and providing liquidity at certain levels of Consolidated Volume through one or more of its [sic] Nasdaq Market Center MPIDs.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The credits Nasdaq provides are designed to improve market quality for all market participants, and Nasdaq allocates its credits in a manner that it believes are the most likely to achieve that result. Specifically, the Exchange believes that the proposed rule change to add a new credit tier of $0.0027 per share executed is reasonable because it is consistent with other credits that the Exchange provides to members that access and/or provide liquidity. As discussed previously, as a general principle the Exchange chooses to offer credits to members in return for market improving behavior. Under Rule 7018(a), the various credits the Exchange provides for members require them to significantly contribute to market quality by accessing and/or providing certain levels of Consolidated Volume through one or more of its [sic] Nasdaq Market Center MPIDs, and volume.

The proposed credit will be provided to members that not only access liquidity in all securities through one or more of its [sic] Nasdaq Market Center MPIDs of more than 0.65% of Consolidated Volume during the month, but also that contribute to the Exchange by providing liquidity in all securities through one or more of its [sic] Nasdaq Market Center MPIDs of more than 0.10% of Consolidated Volume during the month.

The Exchange believes that the proposed $0.0027 per share executed credit is an equitable allocation and is not unfairly discriminatory because a member achieving this credit tier will be both accessing and providing liquidity, which should be beneficial to other members as this both encourages more liquidity on the Exchange, as well as increasing the likelihood that members [sic] resting limit orders may be accessed by members seeking to attain this credit tier. The Exchange seeks to encourage such behavior.

Additionally, the Exchange believes that the proposed new credit tier is an equitable allocation and is not unfairly discriminatory because the new credit tier is uniformly available to all members and affects all members equally and in the same way. Additionally, the proposed new credit tier will further encourage market participant activity and will also support price discovery and liquidity provision.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In terms of inter-market competition, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the changes to the credits provided for the use of the order execution and routing services of the Nasdaq Market Center by members for all securities priced at $1 or more that it trades are reflective of the intense competition among trading venues in capturing order flow. Moreover, the proposed rule change does not impose a burden on competition because Exchange membership is optional and is also the subject of competition from other trading venues. For these reasons, the Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that the Exchange will lose market share as a result of the changes if they are unattractive to market participants.

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4) and (5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2016–115 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2016–115. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2016–115, and should be submitted on or before September 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19689 Filed 8–17–16; 8:45 am]

BILLING CODE 8011–01–P

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[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78564; File No. SR–NYSEArca–2016–62]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change Relating to a Change to the Underlying Index for the PowerShares Build America Bond Portfolio

August 12, 2016.

I. Introduction

On May 3, 2016, NYSE Arca, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) Permit the continued listing and trading of shares ("Shares") of the PowerShares Build America Bond Portfolio ("Fund") following a change to the index underlying the Fund, and (2) propose changes to the index underlying the Fund and the name of the Fund. The proposed rule change was published for comment in the **Federal Register** on May 23, 2016.[3] On June 27, 2016, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received no comments on the proposed rule change. This order institutes proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

II. Exchange's Description of the Proposal

The Exchange currently lists and trades Shares of the Fund[7] under NYSE Arca Equities Rule 5.2(j)(3), Commentary .02, which governs the listing and trading of Investment Company Units ("Units") based on fixed income securities indexes.[8] The Fund is a series of the Trust. Invesco PowerShares Capital Management LLC is the investment adviser ("Adviser") for the Fund. Invesco Distributors, Inc. is the Fund's distributor. The Bank of New York Mellon is the administrator, custodian, and fund accounting and transfer agent for the Fund.

The Exchange submitted its proposed rule change to: (1) Permit the continued listing and trading of Shares of the Fund following a change to the index underlying the Fund; and (2) propose changes to the index underlying the Fund and the name of the Fund.

The Fund seeks investment results that generally correspond to the price and yield (before fees and expenses) of The Bank of America ("BofA") Merrill Lynch Build America Bond Index ("Build America Bond Index"). The Fund generally invests at least 80% of its total assets in taxable municipal securities eligible to participate in the Build America Bond program created under the American Recovery and Reinvestment Act of 2009 or other legislation providing for the issuance of taxable municipal securities on which the issuer receives federal support of the interest paid ("Build America Bonds") and that comprise the Build America Bond Index. The Build America Bond Index is designed to track the performance of U.S. dollar-denominated investment grade taxable municipal debt publicly issued under the Build America Bond program by U.S. states and territories, and their political subdivisions, in the U.S. market. Qualifying securities must have a minimum amount outstanding of $1 million, at least 18 months remaining term to final maturity at the time of issuance, at least one year remaining term to final maturity, a fixed coupon schedule, and an investment grade rating (based on an average of Moody's Investors Services, Inc. ("Moody's"), Standard & Poor's, a division of The McGraw-Hill Company, Inc. ("S&P") and Fitch Ratings, Inc. ("Fitch")).

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77849 (May 17, 2016), 81 FR 32371 ("Notice").

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 78157, 81 FR 43327 (July 1, 2016). The Commission designated August 21, 2016 as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] According to the Exchange, on February 26, 2016, PowerShares Exchange-Traded Fund Trust II ("Trust") filed a post-effective amendment on Form 485 under the Securities Act of 1933 ("Securities Act") to its registration statement on Form N–1A under the Securities Act and the Investment Company Act of 1940 ("1940 Act") (File Nos. 333–138490 and 811–21977) ("Registration Statement"). The Exchange states that the Trust has obtained certain exemptive relief under the 1940 Act. *See* Investment Company Act Release No. 27841 (May 25, 2007) (File No. 812–13335) ("Exemptive Order").

[8] The PowerShares Build America Bond Portfolio was initially listed on the Exchange on November 17, 2009 pursuant to the generic listing criteria of Commentary .02 to NYSE Arca Equities Rule 5.2(j)(3).

The Trust has proposed to change the index underlying the Fund to the BofA Merrill Lynch U.S. Taxable Municipal Securities Plus Index ("New Index") and to change the name of the Fund to PowerShares Taxable Municipal Bond Portfolio. The Exchange represents that the New Index does not meet the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3). The Exchange submitted this proposed rule change to permit the continued listing of the Fund. The New Index meets all of the requirements of the generic listing criteria of NYSE Arca Equities Rule 5.2(j)(3), except for that set forth in Commentary .02(a)(2).[9] Specifically, as of February 4, 2016, approximately 60.51% of the New Index weight was composed of individual maturities of $100 million or more (determined at the time of issuance).

A. Changes to the Index Underlying the Fund

According to the Exchange, the Fund currently has a non-fundamental policy to invest at least 80% of its net assets (plus the amount of any borrowings for investment purposes) in Build America Bonds. Moreover, as stated in the Registration Statement, the Fund complies with that non-fundamental policy because it also is required generally to invest at least 80% of the value of its total assets in the Build America Bonds that comprise the Build America Bond Index, in accordance with the terms of the relief set forth in the Trust's Exemptive Order.

However, in response to a changing market environment that includes a reduction in the number of Build America Bonds, the Adviser has proposed that the Fund's underlying index be changed from one that is focused on Build America Bonds to one that is more broadly focused on taxable municipal debt in general, and which may include Build America Bonds. Changing the Fund's underlying index would require changing the non-fundamental policy set forth above; accordingly, before the Fund can change its underlying index, the Registration Statement states that the Fund's board of trustees ("Board") must approve the underlying index change, and the Fund must provide shareholders with sixty days written notice of the change.

Thus, after this proposed rule change is approved, the Trust represents that it intends to seek to obtain Board approval and provide the requisite shareholder notice. Subject to that Board approval and shareholder notice, the Fund intends to change its underlying index to one that is composed of taxable municipal securities, including both Build America Bonds and non-Build America Bonds. Following such change, the proposed underlying index for the Fund will be the New Index.

According to the Exchange, the change in Fund's underlying index is designed to enable the Fund to expand its range of investments in light of a diminishing supply of Build America Bonds; otherwise, there is no other change to the Fund's investment strategies or objective. After such change, the Fund's investment objective will be to seek investment results that generally correspond (before fees and expenses) to the price and yield of the New Index.

In addition, the Fund will adopt a new non-fundamental investment policy to invest at least 80% of its net assets (plus borrowings for investment purposes) in taxable municipal securities. In addition, the Fund generally will invest at least 80% of its total assets in the securities that will compose the New Index, in accordance with the terms of the Trust's Exemptive Order. However, the Fund may invest up to 20% of its total assets in securities not included in the New Index, in money market instruments, including repurchase agreements or other funds that invest exclusively in money market instruments (subject to applicable limitations under the 1940 Act or exemptions therefrom), convertible securities and structured notes (notes on which the amount of principal repayment and interest payments is based on the movement of one or more specified factors, such as the movement of a particular security or securities index), all to the extent that the Adviser believes investment in such instruments will facilitate the Fund's ability to achieve its new investment objective. In addition, the Fund intends to change its name to PowerShares Taxable Municipal Bond Portfolio.[10]

B. Description of the New Index[11]

The New Index tracks the performance of U.S. dollar denominated taxable municipal debt publicly issued by U.S. states and territories, and their political subdivisions, in the U.S. domestic market. Qualifying securities must be subject to U.S. federal taxes and must have at least 18 months to maturity at point of issuance, at least one year remaining term to final maturity, a fixed coupon schedule (including zero coupon bonds), and an investment grade rating (based on an average of Moody's, S&P and Fitch). The call date on which a pre-refunded bond will be redeemed is used for purposes of determining qualification with respect to final maturity requirements. For Build America Bonds, the minimum amount outstanding is $1 million, and only "direct pay" (*i.e.*, a direct federal subsidy is paid to the issuer) securities qualify for inclusion. "Tax-Credit" (*i.e.*, where the investor receives a tax credit on the interest payments) Build America Bonds are excluded. For all other securities, minimum size requirements vary based on the initial term to final maturity at time of issuance. Securities with an initial term to final maturity greater than or equal to one year and less than five years must have a current amount outstanding of at least $10 million. Securities with an initial term to final maturity greater than or equal to five years and less than ten years must have a current amount outstanding of at least $15 million. Securities with an initial term to final maturity of ten years or more must have a current amount outstanding of at least $25 million. Local bonds issued by U.S. territories within their jurisdictions that are tax exempt within the U.S. territory but not elsewhere are excluded from the New Index. All Rule 144A securities, both with and without registration rights, and securities in legal default are excluded from the New Index. New Index constituents are capitalization-weighted based on their current amount outstanding times the market price plus accrued interest. Accrued interest is calculated assuming next-day settlement. Cash flows from bond payments that are received during the month are retained in the index until the end of the month and then are removed as part of the rebalancing. Cash does not earn any reinvestment income while it is held in the New Index.[12] The index is rebalanced on the last calendar day of the month, based on information available up to and including the third business day before the last business day of the month. No changes are made to constituent holdings other than on month end rebalancing dates.

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[9] Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3) provides that components that in the aggregate account for at least 75% of the weight of the index or portfolio each shall have a minimum original principal amount outstanding of $100 million or more.

[10] The changes described herein with respect to use of the New Index will be effective upon: (1) Approval by the Trust's Board; (2) shareholders' receipt of sixty days written notice of the proposed change; and (3) completing a filing with the Commission of another amendment to the Trust's Registration Statement, or a prospectus supplement reflecting these changes. The Adviser represents that the Adviser has managed and will continue to manage the Fund in the manner described in the Registration Statement and will not implement the changes described herein until this proposed rule change is operative.

[11] The description of the New Index is based on information provided by BofA Merrill Lynch. BofA Merrill Lynch is the "Index Provider" with respect to the Underlying Index and the New Index. The Index Provider is a broker-dealer and has implemented a firewall with respect to and will maintain procedures designed to prevent the use and dissemination of material non-public information regarding the New Index.

As of February 4, 2016, approximately 84.39% of the weight of the New Index components was composed of individual maturities that were part of an entire municipal bond offering with a minimum original principal amount outstanding of $100 million or more for all maturities of the offering. In addition, as of February 4, 2016, the total dollar amount outstanding of issues in the New Index was approximately $281,589,346,769, and the average dollar amount outstanding of issues in the New Index was approximately $27,808,547. Further, the most heavily weighted component represents 2.27% of the weight of the Index and the five most heavily weighted components represent 6.33% of the weight of the New Index.[13] Therefore, the Exchange believes that, notwithstanding that the New Index does not satisfy the criterion in NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (a)(2), the New Index is sufficiently broad-based to deter potential manipulation, given that it is composed of approximately 10,126 issues and 1,811 unique issuers. In addition, the Exchange believes that the New Index securities are sufficiently liquid to deter manipulation in that a substantial portion (84.39%) of the New Index weight is composed of maturities that are part of a minimum original principal amount outstanding of $100 million or more for all the maturities of the offering, and in view of the substantial total dollar amount outstanding and the average dollar amount outstanding of New Index issues, as referenced above.

All components of the New Index have at least an investment grade composite rating of BBB3 or higher (based on an average of S&P, Moody's and Fitch).

The Exchange represents that: (1) With respect to the New Index, except for Commentary .02(a)(2) to NYSE Arca Equities Rule 5.2(j)(3), the Shares of the New Index currently satisfy all of the generic listing standards under NYSE Arca Equities Rule 5.2(j)(3); (2) the continued listing standards under NYSE Arca Equities Rules 5.2(j)(3) and 5.5(g)(2) applicable to Units shall apply to the Shares of the Fund; and (3) the Trust is required to comply with Rule 10A–3 under the Act[14] for the initial and continued listing of the Shares of the Fund. In addition, the Exchange represents that the Shares of the Fund will comply with all other requirements applicable to Units including, but not limited to, requirements relating to the dissemination of key information such as the value of the New Index and the applicable Intraday Indicative Value ("IIV"),[15] rules governing the trading of equity securities, trading hours, trading halts, surveillance, information barriers and the Information Bulletin to Equity Trading Permit Holders, as set forth in Exchange rules applicable to Units and prior Commission orders approving the generic listing rules applicable to the listing and trading of Units.[16]

The current value of the New Index is widely disseminated by one or more major market data vendors at least once per day, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (b)(ii). The IIV for Shares of the Fund is disseminated by one or more major market data vendors, updated at least every 15 seconds during the Exchange's Core Trading Session, as required by NYSE Arca Equities Rule 5.2(j)(3), Commentary .02 (c). The components and percentage weightings of the New Index are also available from major market data vendors. In addition, the portfolio of securities held by the Fund is disclosed daily on the Fund's Web site at *www.invescopowershares.com*. The Exchange also represents that information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information will be available via the CTA high-speed line. The Web site for the Fund will include the prospectus for the Fund and additional data relating to net asset value ("NAV") and other applicable quantitative information. In addition, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. If the Exchange becomes aware that the NAV is not being disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. If the IIV and the New Index value are not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the IIV or New Index value occurs. If the interruption to the dissemination of the IIV or New Index value persists past the trading day in which it occurred, the Exchange will halt trading. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule

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[12] Information concerning constituent bond prices, timing, and conventions is provided in the BofA Merrill Lynch Bond Index Guide, which can be accessed on Bloomberg.

[13] Commentary .02(a)(4) to NYSE Arca Equities Rule 5.2(j)(3) provides that no component fixed-income security (excluding Treasury Securities and GSE Securities, as defined therein) shall represent more than 30% of the weight of the index or portfolio, and the five most heavily weighted component fixed-income securities in the index or portfolio shall not in the aggregate account for more than 65% of the weight of the index or portfolio.

[14] 17 CFR 240.10A–3.

[15] The IIV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session of 9:30 a.m. to 4:00 p.m., Eastern time. Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IIVs taken from the Consolidated Tape Association ("CTA") or other data feeds.

[16] *See, e.g.,* Securities Exchange Act Release Nos. 55783 (May 17, 2007), 72 FR 29194 (May 24, 2007) (SR–NYSEArca–2007–36) (order approving NYSE Arca generic listing standards for Units based on a fixed income index); 44551 (July 12, 2001), 66 FR 37716 (July 19, 2001) (SR–PCX–2001–14) (order approving generic listing standards for Units and Portfolio Depositary Receipts); 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999) (SR–PCX–98–29) (order approving rules for listing and trading of Units).

7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 7.34, which sets forth circumstances under which Shares of the Fund may be halted. The Exchange states that trade price and other information relating to municipal bonds is available through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system.

According to the Exchange, all statements and representations made in this proposal regarding (a) the description of the Fund's portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. The Adviser has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Equities Rule 5.5(m).

III. Proceedings To Determine Whether To Approve or Disapprove SR–NYSEArca–2016–62 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[17] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide comments on the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Act,[18] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of the proposed rule change's consistency with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be "designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and "to protect investors and the public interest."[19]

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposal is consistent with Section 6(b)(5) or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[20]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposal should be approved or disapproved by September 8, 2016. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by September 22, 2016. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, which are set forth in the Notice,[21] in addition to any other comments they may wish to submit about the proposed rule change.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca-2016–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2016–62. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of these filings also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2016–62 and should be submitted on or before September 8, 2016. Rebuttal comments should be submitted by September 22, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19686 Filed 8–17–16; 8:45 am]

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[17] 15 U.S.C. 78s(b)(2)(B).

[18] *Id.*

[19] 15 U.S.C. 78f(b)(5).

[20] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Pub. L. 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[21] *See supra* note 3.

[22] 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78565; File No. SR–BOX–2016–40]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt a New Fee in Section V (Technology Fees) of the BOX Fee Schedule

August 12, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 2016, BOX Options Exchange LLC (the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the Fee Schedule to adopt a new fee in Section V (Technology Fees) of the BOX Fee Schedule on the BOX Market LLC ("BOX") options facility. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section V (Technology Fees) in the Fee Schedule. Specifically, the Exchange proposes to establish Section V.B. (High Speed Vendor Feed ("HSVF") in the BOX Fee Schedule and adopt a fee of $750.00 per month for all market participants for receiving the HSVF. This fee will be payable by any market participant that receives the HSVF through a direct connection to BOX and will be assessed once per market participant.

In February 2013, the Exchange made its proprietary direct market data product, the HSVF, available to all market participants at no cost.[5] The BOX HSVF is a proprietary product that provides: (i) Trades and trade cancelation information; (ii) best-ranked price level to buy and the best-ranked price level to sell; (iii) instrument summaries (including information such as high, low, and last trade price and traded volume); (iv) the five best limit prices for each option instrument; (v) request for Quote messages;[6] (vi) PIP Order, Improvement Order and Block Trade Order (Facilitation and Solicitation) information;[7] (vii) orders exposed at NBBO;[8] (viii) instrument dictionary (*e.g.*, strike price, expiration date, underlying symbol, price threshold, and minimum trading increment for instruments traded on BOX); (ix) options class and instrument status change notices (*e.g.*, whether an instrument or class is in pre-opening, continuous trading, closed, halted, or prohibited from trading); and (x) options class opening time.

The Exchange notes that data connection fees are charged by other options markets such as International Securities Exchange ("ISE"), Bats BZX Exchange ("BATS"), Chicago Board Options Exchange ("CBOE"), The NASDAQ Options Market ("NOM"), Miami International Securities Exchange LLC ("MIAX"), NASDAQ BX, Inc. ("BX"), and NASDAQ PHLX LLC ("Phlx").[9]

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[10] in general, and Section 6(b)(4) and (5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among BOX Participants and other persons using the Exchange's facilities and is not designed to permit unfair discrimination among them.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[12]

By removing "unnecessary regulatory restrictions" on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well. The HSVF is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS.

The decision of the United States Court of Appeals for the District of

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* Securities Exchange Act Release No. 68833 (February 5, 2013), 78 FR 9758 (February 11, 2013) (SR–BOX–2013–04).

[6] *See* Exchange Rules 100(a)(57), 7070(h) and 8050.

[7] As set forth in Exchange Rules 7150 and 7270, respectively.

[8] As set forth in Exchange Rules 7130(b)(3) and 8040(d)(6), respectively.

[9] *See* the ISE Fee Schedule, available at: *https://www.ise.com/assets/documents/OptionsExchange/legal/fee/ISE_fee_schedule.pdf*, the BATS Fee Schedule, available at: *https://batstrading.com/support/fee_schedule/bzx/*, the CBOE Fee Schedule, available at *https://www.cboe.org/framed/pdfframed.aspx?content=/publish/mdxfees/mdxfeescheduleforcboedatafeeds.pdf&section=SEC_MDX_CSM&title=CBOE MDX Fees Schedule*; the NOM Fee Schedule, available at *http://www.nasdaqtrader.com/Micro.aspx?id=optionsPricing*, the MIAX Fee Schedule, available at: *https://www.miaxoptions.com/content/fees* and the Phlx Fee Schedule, available at: *http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

Columbia Circuit in NetCoalition v. SEC, 615 F.3d 525 (D.C. Cir. 2010) ("NetCoalition I"), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. "In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' NetCoalition I, at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that "Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.'[13]

The Court in NetCoalition I, while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record in that case did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSE Arca's data product at issue in that case. As explained below in BOX's Statement on Burden on Competition, however, BOX believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the NetCoalition I case, and that the Commission is entitled to rely upon such evidence in concluding fees are the product of competition, and therefore in accordance with the relevant statutory standards.[14] Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

BOX believes that the allocation of the proposed fee is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described above, the proposed fee is based on pricing conventions and distinctions that exist in BOX's current fee schedule. These distinctions are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal.

As described in greater detail below, if BOX has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can discontinue the use of their data because the proposed product is entirely optional to all parties. Firms are not required to purchase data and BOX is not required to make data available or to offer specific pricing alternatives for potential purchases. BOX can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. BOX continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among subscribers.

The Exchange's proprietary HSVF is currently available to all market participants at no cost; however, the Exchange now proposes to adopt a new fee of $750.00 per month for all market participants who receive the HSVF. The Exchange believes that adopting such a fee is reasonable and appropriate as it is within the range that is charged by other options exchanges.[15]

In addition, the Exchange believes that its fees are equitable and not unfairly discriminatory because all market participants are charged the same fee for access to the HSVF. Further, the Exchange notes that all market participants who wish to receive the feed may, as the feed is available to anyone willing to pay the proposed $750 monthly fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change to the Fee Schedule will simply allow the Exchange to charge all market participants equally for the costs incurred by connecting to the BOX Network. The HSVF is similar to proprietary data products currently offered by other exchanges, and these other exchanges charge comparable monthly fees.[16] While connection to the HSVF is required to receive the broadcasts for and participate in the Exchange's auction mechanisms,[17] the Exchange does not believes the proposed monthly fee will impede competition within these auctions. As discussed above, the Exchange believes that fees for connectivity are constrained by the robust competition for order flow among exchanges and non-exchange markets. Further, excessive fees for connectivity would serve to impair ability to compete for order flow rather than burdening competition. As such, the Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the NetCoalition court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. BOX believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. Data products are valuable to many end subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's Participant's view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer ("BD") will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

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[13] NetCoalition I, at 535.

[14] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank Act") has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges.

[15] *See supra,* note 9. CBOE's data distributor MDX charges a $500 port fee per month; NOM charges a port fee between $500 and $750 a month depending on the port. The Exchange notes the CBOE and NOM charge these fees per port, while the Exchange proposes to assess the fee once per market participant.

[16] *See supra* note 9.

[17] BOX's auction mechanisms include the Price Improvement Period ("PIP"), Complex Order Price Improvement Period ("COPIP"), Facilitation Auction and Solicitation Auction.

Thus, an increase in the fees charged for either transactions or data has the potential to impair revenues from both products. "No one disputes that competition for order flow is 'fierce'." NetCoalition at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. Some exchanges pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an "excessive" price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems ("ATSs"), including dark pools and electronic communication networks ("ECNs"). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including BOX, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and NYSE Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, a SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and BATS/Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters. In Europe, Cinnober aggregates and disseminates data from over 40 brokers and multilateral trading facilities.[18]

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. "No one disputes that competition for order flow is 'fierce'." NetCoalition I at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act[19] and Rule 19b–4(f)(2) thereunder,[20] because it establishes or changes a due, or fee.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2016–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2016–40. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BOX–2016–40, and should be submitted on or before September 8, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19687 Filed 8–17–16; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–78566; File No. SR–ICC–2016–009]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change To Revise the ICC Treasury Operations Policies and Procedures

August 12, 2016.

I. Introduction

On June 15, 2016, ICE Clear Credit LLC ("ICC") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the ICC Treasury Operations Policies and Procedures to provide for the use of a committed foreign exchange ("FX") facility, to make changes to the investment guidelines as well as additional clean-up changes, and to provide additional clarification regarding the calculation of collateral haircuts (SR–ICC–2016–009). The proposed rule change was published for comment in the **Federal Register** on June 30, 2016.[3] The Commission did not receive comments on the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

ICC will revise its Treasury Operations Policies and Procedures to provide for the use of a committed FX facility. ICC has established a committed FX facility which provides for same day settled spot FX transactions. ICC represents that the facility allows ICC to use available United States Dollars ("USD") to convert into Euro to meet a Euro liquidity need, for example in the unlikely event of a Clearing Participant default when Euro is needed for liquidity but only USD is available. In addition, the policy will be revised to document that the FX facility will be tested twice a year.

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[18] *See http://www.cinnober.com/boat-trade-reporting.*

[19] 15 U.S.C. 78s(b)(3)(A)(ii).

[20] 17 CFR 240.19b–4(f)(2).

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 34–78205 (June 30, 2016), 81 FR 44357 (July 7, 2016) (SR–ICC–2016–009).

Additionally, ICC will revise its Treasury Operations Policies and Procedures to make changes to the ICC Treasury Department investment guidelines for operating capital, guaranty fund, and margin cash. ICC will update the list of permitted investments to add short term US Treasury securities (with a final maturity of no greater than 98 days) and remove Money Market Mutual Funds. ICC will also update its investment policy for operating capital to include Treasury/agency reverse repurchase (''repo'') agreements. ICC will update the governance section of the operating capital investment policy to note that the Risk Committee will review any proposed changes to the policy and make recommendations to the Board. Further, ICC will remove reference to an obsolete financial report.

ICC will make additional clean-up changes throughout the Treasury Operations Policies and Procedures. Specifically, ICC will remove outdated language stating that ICC treasury services are provided by The Clearing Corporation. Further, throughout the document, ICC will change references to the ''Director of Operations'' to the ''Chief Operating Officer,'' to correctly reflect the officer title. ICC will remove reference to specific reverse repo counterparties to reflect the addition of multiple reverse repo counterparties. Further, ICC has noted that it has arrangements in place to settle tri-party and bilateral reverse repo transactions, both of which settle delivery vs. payment (''DVP''). As a result, ICC will clarify references throughout the policy from ''DVP reverse repo'' to more specifically refer to ''bilateral reverse repo.'' ICC will remove reference to the titles of specific agreements that it may enter into to effect reverse repo transactions and add general language to encompass all agreements that may be required. ICC will remove information regarding the monitoring of available liquidity resources and add reference to the ICC Liquidity Risk Management Framework. ICC has clarified that its committed repo facility may be used to convert sovereign debt into cash and that the facility will be tested twice per calendar year. ICC will remove outdated information under the ''ICE Clear Credit Banking Relationships'' section of the policy and add language stating that ICC endeavors to maintain banking relationships with highly creditworthy and reliable bank institutions that provide operational and strategic support with respect to holding margin and guaranty fund cash and collateral. ICC also will remove references to specific banking counterparties, as ICC's banking relationships have expanded to include multiple counterparties. ICC will replace the specific names with a generic reference, to capture all counterparties utilized by ICC. ICC also will update certain SWIFT banking information throughout the policy. Further, ICC will update the list of applications used by the Treasury Department to perform daily operations.

Finally, ICC will revise its Treasury Operations Policies and Procedures to provide additional clarification regarding the calculation of collateral haircuts when yield rates are less than or equal to one basis point. This change will document current ICC practices as related to collateral haircut calculation; there will be no change to the collateral haircut methodology.

III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act[4] directs the Commission to approve a proposed rule change of a self-regulatory organization if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such self-regulatory organization. Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to comply with the provisions of the Act and the rules and regulations thereunder.

The Commission finds that the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations thereunder applicable to ICC. ICC asserts that the changes to provide for the use of a committed FX facility will enhance ICC's liquidity resources, and the changes to the investment guidelines will ensure the reliable investment of assets in ICC's control with minimal risk. ICC further asserts that the additional clean-up changes will ensure that the documentation of ICC's treasury arrangements remains up-to-date, clear, and transparent. Similarly, ICC represents that the additional clarification regarding the calculation of collateral haircuts will promote transparency of ICC's risk management practices as related to collateral haircuts. The Commission therefore believes that the proposed rule changes are designed to promote the prompt and accurate settlement of securities transactions and, to the extent applicable, derivatives agreements, contracts, and transactions, and to contribute to the safeguarding of customer funds and securities within the control of ICC in accordance with Section 17A(b)(3)(F) of the Act.[7]

In addition, the Commission finds that the proposed revisions to the ICC Treasury Operations Policies and Procedures are consistent with the relevant requirements of Rule 17Ad–22.[8] In particular, the use of a committed FX facility is intended to further ensure that ICC maintains sufficient financial resources at all times to meet the requirements set forth in Rule 17Ad–22(b)(3).[9] Additionally, the changes to the investment guidelines are aimed to minimize credit, market, and liquidity risks of investment arrangements. Such changes are therefore reasonably designed to meet the requirements of Rule 17Ad–22(d)(3).[10] Finally, the additional clean-up changes and clarification regarding the calculation of collateral haircuts are constructed to ensure ICC's governance arrangements to remain clear and transparent, consistent with the requirements of Rule 17Ad–22(d)(8).[11]

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (File No. SR–ICC–2016–009) be, and hereby is, approved.[14]

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[4] 15 U.S.C. 78s(b)(2)(C).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 240.17Ad–22.

[9] 17 CFR 240.17Ad–22(b)(3).

[10] 17 CFR 240.17Ad–22(d)(3).

[11] 17 CFR 240.17Ad–22(d)(8).

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78s(b)(2).

[14] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–19688 Filed 8–17–16; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14797 and #14798]

California Disaster #CA–00250

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 08/10/2016.

Incident: Mission and 29th Street Fire.

Incident Period: 06/18/2016.

DATES: *Effective Date:* 08/10/2016.

Physical Loan Application Deadline Date: 10/11/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 05/10/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: San Francisco.
Contiguous Counties: California:
Alameda, Marin, San Mateo.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.250
Homeowners without Credit Available Elsewhere	1.625
Businesses with Credit Available Elsewhere	6.250
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14797 5 and for economic injury is 14798 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: August 10, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–19761 Filed 8–17–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14801 and #14802]

Wisconsin Disaster #WI–00052

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of WISCONSIN (FEMA–4276–DR), dated 08/09/2016.

Incident: Severe Storms and Flooding.

Incident Period: 07/11/2016 through 07/12/2016.

Effective Date: 08/09/2016.

Physical Loan Application Deadline Date: 10/11/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 05/09/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 08/09/2016, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:
Ashland, Bayfield, Burnett, Douglas, Florence, Iron, Sawyer, Washburn, and the Bad River Band of the Lake Superior Chippewa Tribe

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14801B and for economic injury is 14802B

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2016–19757 Filed 8–17–16; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14799 and #14800]

Maryland Disaster #MD–00033

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Maryland dated 08/10/2016.

Incident: Heavy Rains and Flooding.

Incident Period: 07/30/2016.

DATES: *Effective date:* 08/10/2016.

Physical Loan Application Deadline Date: 10/11/2016.

Economic Injury (EIDL) Loan Application Deadline Date: 05/10/2017.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

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[15] 17 CFR 200.30–3(a)(12).

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Howard.

Contiguous Counties:

Maryland: Anne Arundel, Baltimore, Carroll, Frederick, Montgomery, Prince Georges.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.125
Homeowners without Credit Available Elsewhere	1.563
Businesses with Credit Available Elsewhere	6.250
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14799 6 and for economic injury is 14800 0.

The State which received an EIDL Declaration # is Maryland.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: August 10, 2016.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2016–19760 Filed 8–17–16; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 9674]

Culturally Significant Objects Imported for Exhibition Determinations: "Spreading Canvas: Eighteenth-Century British Marine Painting" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition "Spreading Canvas: Eighteenth-Century British Marine Painting," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Yale Center for British Art, New Haven, Connecticut, from on or about September 15, 2016, until on or about December 4, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: August 10, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–19740 Filed 8–17–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9673]

U.S. Advisory Commission on Public Diplomacy

ACTION: Notice of meeting.

The U.S. Advisory Commission on Public Diplomacy will hold a public meeting from 10:00 a.m. until 11:30 a.m., Tuesday, September 20, 2016 in the Dirksen Senate Office Building, Room 106 (on Constitution Ave. NE. between 1st and 2nd Streets, NE) in Washington, DC 20515.

The meeting will be on the "2016 Comprehensive Annual Report on Public Diplomacy and International Broadcasting " and will feature findings from the Commission's Congressionally-mandated report. Representatives from the State Department and the Broadcasting Board of Governors will be in attendance to discuss it, which focuses on both Washington and field-directed activities.

This meeting is open to the public, members and staff of Congress, the State Department, Defense Department, the media, and other governmental and non-governmental organizations. To attend and make any requests for reasonable accommodation, email *pdcommission@state.gov* by 5 p.m. on Thursday, September 15, 2016. Please arrive for the meeting by 9:45 a.m. to allow for a prompt meeting start.

The United States Advisory Commission on Public Diplomacy appraises U.S. Government activities intended to understand, inform, and influence foreign publics. The Advisory Commission may conduct studies, inquiries, and meetings, as it deems necessary. It may assemble and disseminate information and issue reports and other publications, subject to the approval of the Chairperson, in consultation with the Executive Director. The Advisory Commission may undertake foreign travel in pursuit of its studies and coordinate, sponsor, or oversee projects, studies, events, or other activities that it deems desirable and necessary in fulfilling its functions.

The Commission consists of seven members appointed by the President, by and with the advice and consent of the Senate. The members of the Commission shall represent the public interest and shall be selected from a cross section of educational, communications, cultural, scientific, technical, public service, labor, business, and professional backgrounds. Not more than four members shall be from any one political party. The President designates a member to chair the Commission.

The current members of the Commission are: Mr. William Hybl of Colorado, Chairman; Ambassador Lyndon Olson of Texas, Vice Chairman; Mr. Sim Farar of California, Vice Chairman; Ambassador Penne Korth-Peacock of Texas; Anne Terman Wedner of Illinois; and Ms. Georgette Mosbacher of New York. One seat on the Commission is currently vacant.

The following individual has been nominated to the Commission but awaits Senate confirmation as of this writing: Douglas Wilson of Delaware.

To request further information about the meeting or the U.S. Advisory Commission on Public Diplomacy, you may contact its Senior Advisor, Chris Hensman, at *HensmanCD@state.gov.*

Dated: August 15, 2016.

Katherine Brown,

Executive Director, Department of State.

[FR Doc. 2016–19632 Filed 8–17–16; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice: 9676]

Culturally Significant Objects Imported for Exhibition Determinations: "A Feast for the Senses: Art and Experience in Medieval Europe" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 257 of April 15, 2003, I hereby determine that the objects to be included in the exhibition "A Feast for the Senses: Art and Experience in Medieval Europe," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Walters Art Museum, Baltimore, Maryland, from on or about October 15, 2016, until on or about January 8, 2017, the John and Mable Ringling Museum of Art, Sarasota, Florida, from on or about February 4, 2017, until on or about April 30, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: August 4, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–19765 Filed 8–17–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9677]

Culturally Significant Objects Imported for Exhibition Determinations: "Francis Picabia: Our Heads Are Round so Our Thoughts Can Change Direction" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 257 of April 15, 2003, I hereby determine that the objects to be included in the exhibition "Francis Picabia: Our Heads Are Round so Our Thoughts Can Change Direction," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, New York, from on or about November 20, 2016, until on or about March 19, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: August 5, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–19746 Filed 8–17–16; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 9675]

Culturally Significant Objects Imported for Exhibition Determinations: "Monumental Lhasa: Fortress, Palace, Temple" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 257 of April 15, 2003, I hereby determine that the objects to be included in the exhibition "Monumental Lhasa: Fortress, Palace, Temple," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Rubin Museum of Art, New York, New York, from on or about September 16, 2016, until on or about January 9, 2017, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: August 4, 2016.

Mark Taplin,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–19763 Filed 8–17–16; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36054]

Kokomo Rail Co., Inc.—Acquisition and Operation Exemption—Rail Line of Indian Creek Railroad Company

Kokomo Rail Co., Inc. (KRC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 4.55 miles of rail line (the Line), from Indian Creek Railroad Company (ICRK). According to KRC's notice, the Line extends between a point of connection to Norfolk Southern Railway Company at or near Florida Station and the end of track northwest of Anderson, Ind., a distance of 4.55 miles in Madison County, Ind. The Line does not have milepost designations. KRC states that the Line extends between Madison County Road 200 West and a point near the intersection of Madison County Roads 500 West and 700 North.

KRC certifies that its projected annual revenues as a result of this transaction will not result in the creation of a Class II or Class I rail carrier, that its projected annual revenue will not exceed $5 million, and that the transaction does not involve any interchange commitments.

The earliest this transaction may be consummated is September 1, 2016, the effective date of the exemption (30 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Petitions for stay must be filed no later than August 25, 2016 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36054, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1666, Chicago, IL 60604.

Board decisions and notices are available on our Web site at *WWW.STB.DOT.GOV.*

Decided: August 15, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–19717 Filed 8–17–16; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0076]

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June 27, 2016, the Southeastern Pennsylvania Transportation Authority (SEPTA) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 238.135(b). FRA assigned the petition Docket Number FRA–2016–0076.

SEPTA is requesting special approval to operate its passenger train exterior side doors and trap doors differently than required by 49 CFR 238.135(b), which requires all such doors must be closed when a train is in motion between stations during specific times of day and type of operating schedule. SEPTA performed a hazard analysis regarding the operation of its trains in this manner and specific mitigations it will undertake to reduce risks.

SEPTA specifically requests special approval for the following:

- Operation of the Silverliner IV or push-pull passenger cars with the exterior side doors or trap doors, or both, in the open position when operating a weekday schedule with trains arriving or departing Suburban Station between the hours of 6:30 a.m. to 9:30 a.m. and 3:30 p.m. to 6:30 p.m.
- Operation of the Silverliner IV or push-pull passenger cars with the exterior side doors or trap doors, or both, in the open position during two designated 3-hour peak periods on holidays. SEPTA will formally declare these peak periods prior to the event and provide train crews with written notification of the same no less than 2 calendar days prior.
- Operation of the Silverliner IV or push-pull passenger cars with the exterior side doors or trap doors, or both, in the open position as "EXTRA" trains when necessitated during emergency exigent circumstances.
- Operation of the Silverliner V cars with the interior trap doors open at all times.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by October 3, 2016 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.* See also *http://www.regulations.gov/privacyNotice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC, on August 15, 2016.

Karl Alexy,

Director, Office of Safety Analysis.

[FR Doc. 2016–19745 Filed 8–17–16; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collections to be submitted to Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1995 (PRA).

SUMMARY: In accordance with the requirements of the PRA (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number.

On April 18, 2016, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published a notice in the **Federal Register** (81 FR 22702) to request public comment on a proposal to extend, with revision, the Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101), which is a currently approved information collection. On April 27, 2016, the agencies published a correction of the April 18 notice in the **Federal Register** (81 FR 24940). The agencies proposed to collect supplementary leverage ratio (SLR) data in new SLR Tables 1 and 2 of FFIEC 101 Schedule A from all banking organizations subject to the advanced approaches risk-based capital rule (generally, banking organizations with $250 billion or more in total consolidated assets or $10 billion or more in on-balance sheet foreign exposures) (advanced approaches banking organizations), unless the advanced approaches banking organization is (i) a consolidated subsidiary of a bank holding company (BHC), savings and loan holding company (SLHC), or depository institution that is subject to the disclosure requirements in Table 13 of section 173 of the advanced approaches risk-based capital rule (advanced approaches rule), or (ii) a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. Advanced approaches banking organizations would begin reporting the proposed SLR data items in FFIEC 101 Schedule A, SLR Tables 1 and 2, effective with the September 30, 2016, reporting date.

Separately, the proposed collection of SLR data in SLR Tables 1 and 2 of FFIEC 101 Schedule A would apply to any U.S. intermediate holding companies (IHCs) formed or designated for purposes of compliance with the Board's Regulation YY (12 CFR 252.153) that are advanced approaches banking organizations, effective with the March 31, 2018, reporting date (advanced approaches IHC). Any subsidiary BHC controlled by a foreign banking organization (FBO) that was subject to the SLR requirements prior to the formation of an IHC would complete FFIEC 101 Schedule A, SLR Tables 1 and 2, through the December 31, 2017, reporting date.

In addition, the agencies proposed that an advanced approaches banking organization should provide its Legal Entity Identifier (LEI) on the cover page of the report beginning September 30, 2016, only if the organization already has an LEI.

The comment period for this proposal expired on June 27, 2016. The agencies did not receive any comments addressing the proposed changes and are now submitting requests to OMB for review and approval of the extension, with revision, of the FFIEC 101. As had been proposed, these reporting changes would take effect as of the September 30, 2016, or the March 31, 2018, report date, as applicable.

DATES: Comments must be submitted on or before September 19, 2016.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control numbers, will be shared among the agencies.

OCC: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email, if possible, to *prainfo@occ.treas.gov.* Alternatively, comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention "1557–0239, FFIEC 101," 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326.

You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hard of hearing, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Board: You may submit comments, which should refer to "FFIEC 101," by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at: *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include reporting form number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert DeV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FDIC: You may submit comments, which should refer to "FFIEC 101," by any of the following methods:

- *Agency Web site: https://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

- *Email: comments@FDIC.gov.* Include "FFIEC 101" in the subject line of the message.
- *Mail:* Manuel E. Cabeza, Counsel, Attn: Comments, Room MB–3105, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7:00 a.m. and 5:00 p.m.

Public Inspection: All comments received will be posted without change to *https://www.fdic.gov/regulations/laws/federal/* including any personal information provided. Paper copies of public comments may be requested from the FDIC Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503; by fax to (202) 395–6974; or by email to *oira_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the proposed revisions to the FFIEC 101 discussed in this notice, please contact any of the agency staff whose names appear below. In addition, copies of the FFIEC 101 form and instructions can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Shaquita Merritt, OCC Clearance Officer, (202) 649–5490, or for persons who are deaf or hard of hearing, TTY, (202) 649–5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

Board: Nuha Elmaghrabi, Federal Reserve Board Clearance Officer, (202) 452–3829, Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

FDIC: Manuel E. Cabeza, Counsel, (202) 898–3767, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to extend for three years, with revision, the FFIEC 101, which is currently an approved collection of information for each agency.

Report Title: Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework.

Form Number: FFIEC 101.

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC

OMB Control No.: 1557–0239.

Estimated Number of Respondents: 20 national banks and federal savings associations.

Estimated Burden per Response: 674 burden hours per quarter to file.

Estimated Total Annual Burden: 53,920 burden hours to file.

Board

OMB Control No.: 7100–0319.

Estimated Number of Respondents: 6 state member banks; 16 bank holding companies and savings and loan holding companies; and 6 intermediate holding companies.

Estimated Burden per Response: 674 burden hours per quarter for state member banks to file, 677 burden hours per quarter for bank holding companies and savings and loan holding companies to file; 3 burden hours per quarter for intermediate holding companies to file; and 300 burden hours for intermediate holding companies' one-time implementation.

Estimated Total Annual Burden: 16,176 burden hours for state member banks to file; 43,328 burden hours for bank holding companies and savings and loan holding companies to file; 72 burden hours for intermediate holding companies to file; 1,800 burden hours for intermediate holding companies' one-time implementation.

FDIC

OMB Control No.: 3064–0159.

Estimated Number of Respondents: 2 insured state nonmember banks and state savings associations.

Estimated Burden per Response: 674 burden hours per quarter to file.

Estimated Total Annual Burden: 5,392 burden hours to file.

Type of Review: Revision and extension of currently approved collections.

General Description of Reports

Each advanced approaches banking organization is required to file quarterly regulatory capital data on the FFIEC's Regulatory Capital Reporting for Institutions Subject to the Advanced Capital Adequacy Framework (FFIEC 101). The FFIEC 101 information collection is mandatory for institutions subject to the advanced approaches risk-based capital rule: 12 U.S.C. 161 (national banks), 12 U.S.C. 324 (state member banks), 12 U.S.C. 1844(c) (bank holding companies), 12 U.S.C. 1467a(b) (savings and loan holding companies), 12 U.S.C. 1817 (insured state nonmember commercial and savings banks), 12 U.S.C. 1464 (savings associations), and 12 U.S.C. 1844(c), 3106, and 3108 (intermediate holding companies).

Abstract

The agencies use the FFIEC 101 data submitted by advanced approaches banking organizations to assess and monitor the levels and components of each reporting entity's capital requirements and the adequacy of the entity's capital under the Advanced Capital Adequacy Framework; to evaluate the impact and competitive implications of the Advanced Capital Adequacy Framework on individual reporting entities and on an industry-wide basis; and to supplement on-site examination processes. The reporting schedules also assist advanced approaches banking organizations in understanding expectations around the system development necessary for implementation and validation of the Advanced Capital Adequacy Framework. Submitted data that are released publicly will also provide other interested parties with information about advanced approaches banking organizations' regulatory capital.

Current Actions

On April 18, 2016, the agencies requested comment on proposed revisions to the FFIEC 101 reporting requirements (April 2016 proposal).[1] On April 27, 2016, the agencies published a correction of the April 18 notice.[2] These proposed revisions included two new tables that would be added to FFIEC 101 Schedule A to collect information related to the agencies' SLR disclosures required in Table 13 of section 173 of the advanced approaches rule. SLR Tables 1 and 2 would replace existing items 91 through 98 of FFIEC 101 Schedule A, and generally would be aligned with the international leverage ratio common disclosure template that was adopted by the Basel Committee on Banking Supervision in January 2014 (international leverage ratio common disclosure template).[3] In addition, the agencies proposed that an advanced approaches banking organization should provide its LEI on the cover page of the report only if the organization already has an LEI.

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[1] 81 FR 22702 (April 18, 2016).

[2] 81 FR 24940 (April 27, 2016).

[3] See Basel Committee on Banking Supervision, *Basel III leverage ratio framework and disclosure requirements;* pages 11–12; available at *http://www.bis.org/publ/bcbs270.pdf.*

The comment period for the proposal ended on June 27, 2016. The agencies did not receive any comments addressing the proposed changes and are now submitting requests to OMB for review and approval of the extension, with revision, of the FFIEC 101. The proposed reporting of SLR Tables 1 and 2 of Schedule A would take effect as of the September 30, 2016, report date for top-tier advanced approaches BHCs, SLHCs, and insured depository institutions, or the March 31, 2018, report date for advanced approaches IHCs. Any subsidiary BHC controlled by an FBO that was subject to the SLR requirements prior to the formation of an IHC would complete report SLR Tables 1 and 2 of Schedule A, through the December 31, 2017, report date. Additionally, the proposed reporting of the LEI would take effect as of the September 30, 2016, report date.

I. Proposed SLR Changes

A. Introduction

In the April 2016 proposal, the agencies proposed to add two new tables to FFIEC 101 Schedule A to collect information related to the SLR disclosures required in Table 13 of section 173 of the advanced approaches rule.[4] Proposed SLR Tables 1 and 2, which would replace existing items 91 through 98 of FFIEC 101 Schedule A,[5] would be aligned with the international leverage ratio common disclosure template, with some minor changes to the titles of the line items and clarifications in the instructions, consistent with the revisions to the SLR in the regulatory capital rule (SLR rule)[6] and the accounting terminology of U.S. generally accepted accounting principles. The proposal generally would incorporate the complete international leverage ratio common disclosure template into Schedule A to ensure transparency and comparability of reporting of regulatory capital elements across internationally active banking organizations. The proposed revised Schedule A also would include an additional item applicable to certain advanced approaches BHCs only, which would collect data on an advanced approaches BHC's enhanced SLR buffer, if applicable.

B. Scope, Timing, and Frequency of Proposed Reporting Changes

The proposed revisions to the FFIEC 101 would apply only to an advanced approaches banking organization as described in section 173(a)(2) of the advanced approaches rule effective with the September 30, 2016, report date.[7] Generally, the SLR disclosures apply to an advanced approaches institution, unless it is (1) a consolidated subsidiary of a BHC, SLHC, or depository institution that is subject to these disclosure requirements; or (2) a subsidiary of a non-U.S. banking organization that is subject to comparable public disclosure requirements in its home jurisdiction. Completing the proposed FFIEC 101 items for the SLR for a given period would satisfy an advanced approaches banking organization's requirement to disclose Table 13 for that period.

Separately, each advanced approaches banking organization, regardless of its parallel run status, is required to disclose its SLR, and the numerator and denominator of its SLR, under section 172(d) of the advanced approaches rule.[8] This is a separate disclosure requirement, which the agencies have proposed to implement for banks and savings associations that are advanced approaches banking organizations through a revision to Schedule RC–R, Part I, Regulatory Capital Components and Ratios, of the Consolidated Reports of Condition and Income (Call Report) (FFIEC 031 and 041)[9] reporting forms using the standard PRA notice and comment process.[10]

An IHC formed or designated for purposes of compliance with the Board's Regulation YY (12 CFR 252.153) is required to meet all applicable capital adequacy standards set forth in the Board's Regulation Q, except for subpart E.[11] An IHC that meets the definition of an advanced approaches banking organization under the Board's Regulation Q (12 CFR 217.100) would begin reporting the proposed SLR data items in the FFIEC 101 effective with the March 31, 2018, report date, and would begin calculating these proposed items starting January 1, 2018. This reporting requirement is consistent with Regulation YY, which subjects advanced approaches IHCs to the SLR beginning on January 1, 2018.[12] Such an IHC would not be required to complete the rest of the FFIEC 101 because Regulation YY requires an IHC to calculate its risk-based capital requirements using only the standardized approach, and not the advanced approaches rule, even if it meets the advanced approaches applicability threshold.[13] Further, any subsidiary BHC that is controlled by an FBO that was subject to the SLR disclosures prior to the formation of an IHC would complete FFIEC 101 Schedule A, SLR Tables 1 and 2, through the December 31, 2017, report date.

Depository institutions that are exempt from filing the FFIEC 101, but remain subject to the SLR, would not need to begin filing the FFIEC 101. Instead, these institutions would report their SLR, and the numerator and denominator of their SLR, under the proposed Call Report revisions discussed above.

The agencies proposed to collect the SLR information in SLR Tables 1 and 2 of FFIEC 101 Schedule A quarterly. Each reporting entity would continue to submit the applicable quarterly reports on the same due dates as are currently in effect for the reporting entity for as long as it remains subject to the requirements of section 173(a)(2) of the advanced approaches rule.

C. Confidentiality

To ensure transparency of regulatory capital data reported by internationally active banking organizations, the agencies proposed to make public the SLR information collected in proposed SLR Tables 1 and 2 of FFIEC 101 Schedule A, regardless of an advanced approaches banking organization's parallel run status.

D. Initial Reporting

For the September 30, 2016, and March 31, 2018, initial report dates, as applicable, banking organizations may provide reasonable estimates for any new or revised items in SLR Tables 1 and 2 of FFIEC 101 Schedule A initially required to be reported as of that date for which the requested information is not readily available.

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[4] See 12 CFR 3.173 (OCC); 12 CFR 217.173 (Board); and 12 CFR 324.173 (FDIC).

[5] Although items 91 through 98 are included on the FFIEC 101 report form, these items are currently shaded out and not collected.

[6] See 12 CFR 3.10(c)(4) (OCC) for national banks and Federal savings associations; 12 CFR 217.10(c)(4) (Board) for BHCs, SLHCs, and state member banks; 12 CFR 324.10(c)(4) (FDIC, for state nonmember banks and state savings associations), all as amended by 79 FR 57725 (Sept. 26, 2014).

[7] A top-tier advanced approaches banking organization would be required to complete SLR Tables 1 and 2 of FFIEC 101 Schedule A, regardless of parallel run status. Any advanced approaches banking organization that is a consolidated subsidiary of a top-tier advanced approaches BHC, SLHC, or insured depository institution would not complete SLR Tables 1 and 2.

[8] See 12 CFR 3.172(d) (OCC); 12 CFR 217.172(d) (Board); and 12 CFR 324.172(d) (FDIC).

[9] OMB Numbers: OCC, 1557–0081; Board, 7100–0036; and FDIC, 3064–0052.

[10] See 80 FR 56539 (September 18, 2015) and 81 FR 45357 (July 13, 2016).

[11] See 12 CFR 252.153(e)(2)(i)(A).

[12] See *Id.*

[13] An IHC that chooses to comply with subpart E of 12 CFR part 217 would be required to report the entirety of the FFIEC 101. See 12 CFR 252.153(e)(2)(i)(B). In contrast, a BHC that is a subsidiary of a FBO that is subject to subpart E of 12 CFR part 217, but that has received prior written approval from the Board to not comply with subpart E of 12 CFR part 217, would not be required to report the entire FFIEC 101, but generally would be expected to complete Schedule A. See 12 CFR 252.153(e)(2)(i)(C).

E. Summary of the Proposed FFIEC 101 SLR Data Changes

The proposed SLR items in FFIEC 101 Schedule A are divided into two tables: (1) Summary comparison of accounting assets and total leverage exposure (SLR Table 1) and (2) Supplementary leverage ratio (SLR Table 2). Proposed SLR Table 1, items 1.1 through 1.8, would collect summary information on an institution's accounting assets for purposes of reconciling balance sheet assets reported in published financial statements and total leverage exposure.

Proposed SLR Table 2, items 2.1 through 2.23, would collect detailed information for the calculation of an institution's total leverage exposure and the SLR, consistent with the international leverage ratio common disclosure template. Items 2.1 through 2.3 would collect information about an institution's on-balance sheet exposures. Items 2.4 through 2.11 would collect information about an institution's derivative exposures. Items 2.12 through 2.16 would collect information about an institution's repo-style transactions. Items 2.17 through 2.19 would collect information about an institution's off-balance sheet exposures. Items 2.20 through 2.22 would collect information about an institution's capital, total leverage exposure, and the SLR. Item 2.23, the enhanced SLR buffer, is an additional line item that is not included on the international leverage ratio common disclosure template. This item would apply only to an advanced approaches BHC that is subject to the enhanced SLR standard and would help determine whether the BHC is subject to limitations on capital distributions and discretionary bonus payments.[14]

In the revised draft instructions for proposed SLR Tables 1 and 2 of FFIEC 101 Schedule A, the agencies are clarifying the reporting treatment of variation margin disputes in relation to derivative transactions. In particular, if a dispute over the correct amount of variation margin arises between a banking organization and a counterparty, the banking organization may recognize the amount of variation margin that has been transferred as long as the parties are acting in accordance with agreed-upon practices to settle a disputed trade and all other conditions for qualifying cash variation margin are met.

II. Reporting the Legal Entity Identifier

The LEI is a 20-digit alphanumeric code that uniquely identifies entities that engage in financial transactions. The LEI system is designed to facilitate several financial stability objectives, including the provision of higher quality and more accurate financial data.

The agencies proposed to have an advanced approaches banking organization provide its LEI on the cover page of the FFIEC 101 beginning September 30, 2016, only if the organization already has an LEI. The LEI must be a currently issued, maintained, and valid LEI, not an LEI that has lapsed. An advanced approaches banking organization that does not have an LEI would not be required to obtain one for purposes of reporting it on the FFIEC 101.

III. Request for Comment

Public comment is requested on all aspects of this joint notice. Comments are invited on:

(a) Whether the collections of information that are the subject of this notice are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this joint notice will be shared among the agencies. All comments will become a matter of public record.

Dated: August 11, 2016.

Stuart Feldstein,

Director, Legislative and Regulatory Activities, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, August 12, 2016.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 12th day of August, 2016.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2016–19721 Filed 8–17–16; 8:45 am]

BILLING CODE 4810–33–6210–01–6714–01–P

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[14] 79 FR 24528 (May 1, 2014); 80 FR 49082 (August 14, 2015).

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Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Acuña Cactus and the Fickeisen Plains Cactus; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2013–0025; 4500090023]

RIN 1018–AZ43

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Acuña Cactus and the Fickeisen Plains Cactus

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the *Echinomastus erectocentrus* var. *acunensis* (acuña cactus) and the *Pediocactus peeblesianus* var. *fickeiseniae* (Fickeisen plains cactus) under the Endangered Species Act. Critical habitat for the acuña cactus is located in Maricopa, Pima, and Pinal Counties, Arizona, and critical habitat for the Fickeisen plains cactus is located in Coconino and Mohave Counties, Arizona. The effect of this regulation is to designate critical habitat for the acuña cactus and the Fickeisen plains cactus under the Endangered Species Act.

DATES: This rule becomes effective September 19, 2016.

ADDRESSES: This final rule is available on the Internet at *http://www.regulations.gov*, Docket No. FWS–R2–ES–2013–0025. Comments and materials we received, as well as some supporting documentation used in the preparation of this final rule, are available for public inspection at *http://www.regulations.gov.* All of the comments, materials, and documentation that we considered in this rulemaking are available by appointment, during normal business hours at: U.S. Fish and Wildlife Service, 9828 North 31st Ave., Suite C3, Phoenix, AZ 85051; telephone 602–242–0210; facsimile 602–242–2513.

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this critical habitat designation and are available at *http://www.fws.gov/southwest/es/arizona*, at *http://www.regulations.gov* in Docket No. FWS–R2–ES–2013–0025, and at the Arizona Ecological Services Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we developed for this critical habitat designation will also be available at the U.S. Fish and Wildlife Service Web site and Field Office set out above, and may also be included in the preamble and at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, U.S. Fish and Wildlife Service, 9828 North 31st Ave., Suite C3, Phoenix, AZ 85051; by telephone (602) 242–0210; or by facsimile (602) 242–2513. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

This document consists of a final rule to designate critical habitat for *Echinomastus erectocentrus* var. *acunensis* (acuña cactus) and *Pediocactus peeblesianus* var. *fickeiseniae* (Fickeisen plains cactus) under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act). In this final rule, we refer to these species by their common names.

Why we need to publish a rule. This is a final rule to designate critical habitat for the acuña cactus and Fickeisen plains cactus. Under the Act, any species that is determined to be an endangered or threatened species requires critical habitat to be designated, to the maximum extent prudent and determinable. Designations and revisions of critical habitat can only be completed by issuing a rule.

On October 3, 2012, the U.S. Fish and Wildlife Service (Service) published in the **Federal Register** a proposed rule to list the acuña cactus and the Fickeisen plains cactus as endangered species and designate critical habitat for them (77 FR 60509). The Service published in the **Federal Register** a final rule to list the acuña cactus and the Fickeisen plains cactus as endangered species on October 1, 2013 (78 FR 60608). Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat.

The critical habitat areas we are designating in this rule constitute our current best assessment of the areas that meet the definition of critical habitat for the acuña cactus and the Fickeisen plains cactus. We included unoccupied areas with suitable acuña cactus habitat in the proposed critical habitat designation; however, we have since changed our determination and concluded that unoccupied habitat is not essential for the conservation of the acuña cactus and, therefore, removed these areas from the final designation. All areas included in this final critical habitat designation for both the acuña cactus and the Fickeisen plains cactus are occupied. We are designating:

- In total, approximately 7,501 ha (18,535 ac) in six units as critical habitat for the acuña cactus.
- In total, approximately 7,062 ha (17,456 ac) in six units as critical habitat for the Fickeisen plains cactus.

Economic analysis. In order to consider economic impacts, we have prepared an analysis of the economic impacts of the critical habitat designations. We announced the availability of the draft economic analysis (DEA) in the **Federal Register** on March 28, 2013 (78 FR 18938), allowing the public to provide comments on our analysis. We have incorporated the comments and have completed the final economic analysis (FEA, dated August 23, 2013).

Peer review and public comment. We sought comments from independent specialists to ensure that our designation is based on scientifically sound data and analyses. We invited these peer reviewers to comment on our listing and critical habitat proposal. We obtained opinions from two knowledgeable individuals for the acuña cactus and two knowledgeable individuals for the Fickeisen plains cactus, all with scientific expertise to review our technical assumptions, analysis, and whether or not we had used the best available information for both plants. The comments of these reviewers were focused on the designation of the two species; we received only one review that incorporated a comment on the Fickeisen plains cactus critical habitat designation portion of the draft rule. These peer reviewers generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve this final rule. Information we received from peer review is incorporated into this final rule. We also considered all comments and information received from the public during the comment period.

Previous Federal Actions

On October 1, 2013, we published in the **Federal Register** a final determination to list the acuña cactus and the Fickeisen plains cactus as endangered species under the Act (78 FR 60608). Please refer to the proposed listing and critical habitat rule for the acuña cactus and the Fickeisen plains cactus (77 FR 60509, October 3, 2012) for a discussion of previous Federal actions that occurred prior to the listing of these taxa.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the acuña cactus and the Fickeisen plains cactus during three comment periods. The first comment period associated with the publication of the proposed rule (77 FR 60509) opened on October 3, 2012, and closed on December 3, 2012. We requested comments on the proposed critical habitat designation and associated DEA during a comment period that opened March 28, 2013, and closed on April 29, 2013 (78 FR 18938). We also requested comments on revisions to the proposed critical habitat designation during a comment period that opened July 8, 2013, and closed July 23, 2013 (78 FR 40673). We did not receive a request for a public hearing during any of the three open comment periods. We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and DEA during these comment periods.

During the public comment periods, we received 13 comment letters, including 1 from a peer reviewer, directly addressing the proposed critical habitat designation. All substantive information provided during comment periods has either been incorporated directly into this final determination or addressed below.

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited expert opinion from three knowledgeable individuals on the acuña cactus and six on the Fickeisen plains cactus having scientific expertise that included familiarity with the respected taxon and its habitat, biological needs, and threats. We received only one response that incorporated a comment on the critical habitat designation portion of the draft rule.

We reviewed the comment received from the peer reviewer for substantive issues and new information regarding the proposed rules to list and designate critical habitat for the acuña cactus and Fickeisen plains cactus. The peer reviewer generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final rules. Peer reviewer comments are addressed in the following summary and incorporated into this final critical habitat rule as appropriate.

Peer Reviewer Comments

(1) *Comment:* One peer reviewer commented that the designation of 1,000 meters (m) (3,280 feet (ft)) of pollination area surrounding each Fickeisen plains cactus population is inadequate to buffer threats. The reviewer suggested increasing the area around each population area by an additional 1,000 m (3,280 ft) for a total of 2,000 m (6,561 ft) to adjust for uncertainties of plant locations, provided that the primary constituent elements are present.

Our Response: The Fickeisen plains cactus is dependent on pollinators for reproduction. Thus, preserving the interaction between the cactus and its pollinators is integral for survival. Through our analysis, we found that a 1,000-m (3,280-ft) pollination area was sufficient to support the maximum foraging distance of ground-nesting bees that are the primary pollinators of the cactus. This 1,000-m (3,280-ft) pollination area is not intended to serve as a buffer from threats, but as a primary constituent element necessary to support the essential physical or biological features. We do not have information suggesting that a larger area around plants is necessary to maintain and support plant-pollinator interactions.

Federal Comments

(2) *Comment:* The U.S. Air Force provided information on past and planned future activities to conserve the acuña cactus on the Barry M. Goldwater Gunnery Range (BMGR).

Our Response: Based on the information we received, the Service considered land on the BMGR for possible exemption from the final critical habitat designation for the acuña cactus under the authority of section (4)(a)(3)(B)(i) of the Act. The Service met with the U.S. Air Force to discuss current and planned conservation measures for the acuña cactus on the BMGR. We have also evaluated the conservation measures for the species as presented in the approved Integrated Natural Resources Management Plan (INRMP) for the BMGR. The revised INRMP provides the following benefits for the acuña cactus: Avoiding disturbance of vegetation and pollinators within 900 m (2,953 ft) of known acuña cactus plants; developing and implementing procedures to control trespass livestock; monitoring illegal immigration, contraband trafficking, and border-related enforcement to prevent acuña cacti from being trampled or run over by vehicles; and continuing to monitor and control invasive plant species to maintain quality habitat and prevent the spread of fire where it was historically infrequent. For these reasons, the BMGR is exempt from the final designation of critical habitat for the acuña cactus. Please see the Exemptions section of this rule for a more detailed analysis.

Tribal Comments

(3) *Comment:* The Tohono O'odham Nation requested both a meeting with the Service and an exclusion from the acuña cactus critical habitat designation on their lands. They provided information that efforts by the Tohono O'odham Nation's legislative body to protect the acuña cactus are under way.

Our Response: The Service met with the Tohono O'odham Nation to discuss current and planned conservation measures for the acuña cactus on Tribal lands. The Service has considered land on the Tohono O'odham Nation for exclusion from the critical habitat designation under section (4)(b)(2) of the Act. We are excluding Tohono O'odham Nation land from the final critical habitat designation because the benefits of exclusion as critical habitat outweigh the benefits of inclusion as critical habitat. As further explained in the Exclusions section of this rule, we have concluded that the Tohono O'odham Nation has a commitment to protect and manage the acuña cactus habitat on their lands. Exclusion of lands of the Tohono O'odham Nation as critical habitat will allow us to maintain a cooperative working relationship with the Nation, and we expect that the Nation will continue to protect and manage the acuña cactus on their lands.

(4) *Comment:* The Navajo Nation requested an exclusion from the final Fickeisen plains cactus critical habitat designation and submitted the final Navajo Nation Fickeisen Plains Cactus Management Plan that guides species and habitat management for the cactus on all lands administered by the Tribe.

Our Response: The Service has considered land on the Navajo Nation for exclusion under section (4)(b)(2) of the Act and has met with the Navajo Nation to discuss current and planned conservation measures for the Fickeisen plains cactus on Tribal lands. We are excluding Navajo Nation land from the final critical habitat designation because the benefits of exclusion as critical habitat outweigh the benefits of inclusion as critical habitat. As further explained in the Exclusions section of this rule, we have concluded that the Navajo Nation has a commitment to protect and manage the Fickeisen plains cactus on their land as described in the final management plan. Exclusion of lands of the Navajo Nation as critical habitat will allow us to maintain a cooperative working relationship with the Nation, and we expect that the Nation will continue to protect and manage Fickeisen plains cactus habitat on their lands.

(5) *Comment:* The Navajo Nation suggests that critical habitat not be designated for the Fickeisen plains cactus due to the possibility of increased illegal collection. It is the position of the Navajo Nation Department of Fish and Wildlife (NNDFW) that illegal collection is a serious threat to the Fickeisen plains cactus and that making population locations public and easily accessible is detrimental to the conservation of the species.

Our Response: We acknowledge the concern of the Navajo Nation that designating critical habitat may lead to illegal collection of listed plant species, but we disagree with this conclusion for the Fickeisen plains cactus. Section 4(a)(3) of the Act and implementing regulations (50 CFR 424.12), require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species. In the proposed rule, we found no information that the Fickeisen plains cactus is threatened by illegal collection and concluded that the designation of critical habitat is prudent for the plant (77 FR 60509). In addition, during the comment periods for the proposed rule, we did not receive new information from the Navajo Nation or any other entity indicating that illegal collection is occurring across the range of the plant.

(6) *Comment:* The Navajo Nation commented that there is no data showing that microbiotic soil crusts are closely associated with the Fickeisen plains cactus and, therefore, should not be included as a primary constituent element.

Our Response: We acknowledge that there is no evidence available indicating that biological soil crusts are essential to the conservation of the Fickeisen plains cactus, only that crusts are a component of the habitat. Therefore, we have revised the primary constituent element language for this species. Please see the *Primary Constituent Elements for the Fickeisen Plains Cactus* section in the rule.

(7) *Comment:* The Navajo Nation commented that the proposed Fickeisen plains cactus critical habitat locations on their land are based on outdated, approximately 20-year-old data and, thus, are not based on the best scientific information. In addition, the Tribe questioned critical habitat designation in areas containing fewer than 25 cacti when there are larger populations of the plant elsewhere. The Tribe feels that extra conservation efforts should not be focused on smaller populations.

Our Response: Section 3(5)(A) of the Act defines critical habitat to mean: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 4 of this Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of this Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. The criteria for critical habitat were evaluated using the best scientific and commercial data available including plant surveys that occurred, in some cases, more than 18 years ago and at sites that have not been revisited. In the proposed rule, we specifically requested information from the public on the current status of populations where plants had been documented historically, but the site had not been revisited (77 FR 60509, p. 60512). The Navajo Nation also submitted general information describing the populations on Tribal land, which included records of those that were last observed nearly 20 years ago, and for which they used to estimate the total number of Fickeisen plains cacti on Tribal land. We received no additional information on these populations. Therefore, we have used the best available scientific information in the designation of critical habitat for this species.

In addition, we cannot exclude an occupied area from a critical habitat designation based on small population size. Rather, we are required under the Act to apply the critical habitat designation to all areas that meet the definition in section 3(5)(A) outlined above, provided we have not determined that the benefits of exclusion outweigh the benefits of including the area in the critical habitat designation. As mentioned in the response to comment number 4, above, we have made such a determination under section 4(b)(2) of the Act for Navajo Nation lands and are excluding from the final critical habitat designation all Navajo Nation lands, some of which contain small populations of the Fickeisen plains cacti. The exclusion of lands on the Navajo Nation as critical habitat will aid the Service in maintaining a cooperative working relationship with the Nation. In addition, we expect that the Navajo Nation will continue conservation efforts throughout the entire area occupied by the cactus, even where population size is limited.

Public Comments

(8) *Comment:* The Babbitt Ranches, LLC, submitted the Draft Babbitt Ranches Fickeisen Plains Cactus Management Plan and requested that their lands be excluded from the final designation of critical habitat.

Our Response: The Service considered land managed by the Babbitt Ranches, LLC, for exclusion under section (4)(b)(2) of the Act and has met with the landowners to discuss current and planned conservation measures for the Fickeisen plains cactus. As explained in the Exclusions section of this rule, we are excluding from the critical habitat designation lands owned by the Babbitt Ranches, LLC, and State trust lands that are managed by the Babbitt Ranches, LLC, where a land closure is in place. However, we are not excluding from the final designation the federally owned lands where Babbitt Ranches, LLC, holds grazing permits.

(9) *Comment:* One commenter suggested that the use of the total number of acuña cactus flowers that bloomed in the spring following a winter with 29.7 centimeters (cm) (11.66 inches (in)) of precipitation recorded is biased. The commenter suggested using the percentage of adults with flowers or the average number of flowers per adult as a different metric. The commenter analyzed the Organ Pipe Cactus National Monument (OPCNM) data with these metrics and found no correlation between precipitation and flowering, adult population counts, or plant mortality.

Our Response: The use of the number of acuña cactus flowers that bloomed in the spring following 29.7 cm (11.66 in) of precipitation was properly used to identify unoccupied areas that could be considered essential to the conservation of the species. In the proposed rule, we discussed survey data gathered from monitoring plots established in 1977; these data illustrate the relationship between precipitation and acuña cactus flowering. We noted that acuña cactus flower production and recruitment peaked in 1992 (Holm 2006, p. 2–10) following a winter period with total precipitation of 29.7 cm (11.66 in) (Western Regional Climate Center (WRCC) 2012, entire). Similar peaks in recruitment occurred in the early 1990s (Holm 2006, p. 2–6; NPS 2011a, p. 1) following a 1990 summer period with 24.6 cm (9.7 in) of precipitation (WRCC 2012, entire). Alternatively, we also noted flower production lows in years with markedly low winter precipitation. We also note that Johnson (1992) found that flower production was highest during the 2 wettest years of his study; his analysis suggests that rainfall is positively correlated with the number of flowers produced in acuña cactus, as well as in other cacti, and cites numerous studies in his conclusion. Therefore, we used this information to identify areas that receive 29.7 cm (11.66 in) or higher total annual precipitation as necessary for the acuña cactus reproduction and survival. Thus, the best available information indicates that the total number of flowers is an appropriate metric. However, public comments we received provided evidence that this metric should be adjusted to reflect that areas receiving 29.7 cm (11.66 in) or higher in winter precipitation only (not annual precipitation) are necessary for the acuña cactus. We reassessed our proposed critical habitat based on this metric, but there are no areas in southern Arizona that contain the geology, elevation, and vegetation communities required by the cactus that support this level of precipitation concentrated in the winter months. Thus, in this final critical habitat designation, we removed 12,113 ha (29,933 ac) of proposed critical habitat from multiple units.

(10) *Comment:* One commenter suggested that the inclusion of acuña cactus critical habitat on private lands in and around the town of Ajo may impede the ability of Ajo to attain funding for infrastructure improvements within the town.

Our Response: Despite the fragmented nature of the pollinator habitat in and around the town of Ajo, three juvenile acuña cacti were found in 2013 from within Ajo town site populations and two juveniles were found in 2013 in the Little Ajo Mountains just south of the New Cornelia Copper Mine. The presence of these juveniles suggests that these areas identified as critical habitat contain the physical and biological features necessary for acuña cactus survival, including supporting pollinators that may be utilizing habitat within the town of Ajo. As stated in the FEA (2013, p. ES–9), no future projects with a Federal nexus were identified within the areas proposed as critical habitat in the town of Ajo and, thus, no impacts are forecast for community infrastructure and development activities.

(11) *Comment:* One commenter is concerned with the reduction in proposed acuña cactus critical habitat due to the miscalculation of annual versus winter precipitation. This commenter suggests creating a lower winter precipitation limit necessary for acuña cactus survival, thus increasing the amount of critical habitat required for the species.

Our Response: We recognize that adequate precipitation is necessary for acuña cactus seedling survival, flowering, and fruit set in adult plants. We also recognize that as climate change progresses, areas with higher precipitation or cooler temperatures may become important for the future survival of the species. However, we lack sufficient monitoring and climate modeling data to adjust the precipitation limit utilized in our proposed rule. We made the public aware of our incorrect usage of annual rainfall data rather than winter rainfall data in our revised proposed rule (July 8, 2013; 78 FR 40673), and we announced that we had removed all of the unoccupied critical habitat proposed in our October 3, 2012, proposed rule (77 FR 60509). We have used the best information available at this time to designate critical habitat.

(12) *Comment:* One commenter stated the DEA fails to account for impacts associated with situations in which an activity does not jeopardize the species' continued survival, but nonetheless may be subject to project modifications to avoid adverse modification of critical habitat.

Our Response: Section 2.3 of the FEA describes the reasons the Service does not anticipate critical habitat designation to result in additional conservation requirements. These reasons are also presented in the Service's "Incremental Effects of Critical Habitat Designation for the Acuña Cactus and the Fickeisen Plains Cactus". Conservation measures being implemented in response to the species' listing status under the Act are expected to sufficiently avoid potential destruction or adverse modification of critical habitat as well. Thus, projects are already avoiding adverse modification under the regulatory baseline, and no additional conservation measures or project modifications are expected following the critical habitat designation. The Service acknowledges there may be rare cases in which localized projects may not adversely affect the plants, but may adversely modify critical habitat. Specifically, this potential scenario could occur in areas of proposed critical habitat where the cacti are at very low densities. However, the best available information does not indicate that such areas are known to exist at this time.

(13) *Comment:* One commenter stated, "according to the Service, because the [acuña cactus] is closely tied to its habitat, it is more likely that surface disturbances resulting in critical habitat being adversely modified would likely also constitute jeopardy to the species." In light of this assertion, the commenter stated that a careful analysis of likely reasonable and prudent alternatives (RPAs) must be undertaken when evaluating the costs associated with designating critical habitat. In this case, the DEA contains no such discussion and limits the assessment of costs solely to administrative costs associated with carrying out a section 7 consultation.

Our Response: Section 2.3.2 of the FEA describes the analytic framework used to identify incremental impacts of the proposed critical habitat designation. The analytic framework discussed in this section takes into account the above statements. Specifically, the FEA relies upon this statement as the basis for assuming that project modifications recommended to avoid adverse modification would not differ from those recommended to avoid jeopardy.

Since all of the designated critical habitat units for the acuña cactus are occupied, a Federal action requiring section 7 consultation would need to analyze impacts to both the species and critical habitat. If the action jeopardizes the species, the development of RPAs to conserve the species would be the same as those for critical habitat. Therefore, there would be no additional cost to conserve critical habitat beyond what it costs to prevent jeopardizing the species. RPAs are developed in cooperation with the Federal agency and applicant (if any) because often they are the only ones who can determine if an alternative is within their legal authority and jurisdiction, and if it is economically and technologically feasible.

As stated in the FEA (ES–6, Appendix C, p. 11), in most cases the types of conservation efforts requested by the Service during section 7 consultation regarding the plants are not expected to change with critical habitat designation of occupied habitat due to the fact that the species are closely tied to their habitat and are not mobile. In most instances, we anticipate that the conservation efforts recommended to avoid jeopardy to the species also effectively would avoid the destruction or adverse modification of occupied critical habitat. As a result, critical habitat designation generally will not change the types of plant conservation efforts recommended by the Service. For these reasons, the incremental cost of designating critical habitat is considered administrative (*i.e.*, those costs associated with addressing adverse modification in section 7 consultations).

(14) *Comment:* One commenter asserted that the Service fails to consider the significant expense associated with initiating consultation, including the costs involved in preparing a biological assessment and submitting other information requested by the Service as a part of section 7 consultation.

Our Response: The FEA relies on the best available information to estimate the administrative costs of section 7 consultations. As described in Exhibit 2–2 of the FEA, the consultation cost model is based on a review of consultation records and interviews with staff from three Service field offices, telephone interviews with action agencies (*e.g.*, Bureau of Land Management (BLM), U.S. Forest Service, and U.S. Army Corps), and telephone interviews with private consulting firms who perform work in support of permittees.

The model is periodically updated with new information received in the course of data collection efforts supporting economic analyses and public comment on more recent critical habitat rules. In addition, the general schedule rates are updated annually. The cost of preparing a biological assessment is included as part of the consultation cost model, with estimated incremental costs ranging from $500 to $5,600 per consultation. These costs are based on interviews with representatives from private consulting firms on the typical costs charged to clients in support of section 7 consultation efforts (*e.g.*, biological survey and preparation of materials to support a biological assessment).

(15) *Comment:* One commenter asserted that the DEA fails to consider that significant project delays result from the section 7 consultation process.

Our Response: As discussed in the economic analysis, activities that would require consultation for critical habitat are primarily the same as activities that currently require consultation for the species because all of the proposed critical habitat units are occupied. We do not expect new consultations to result solely from the designation of critical habitat. Accordingly, critical habitat designation is not expected to result in any measurable time delays beyond the time constraints created by the baseline section 7 consultation process.

(16) *Comment:* One commenter stated that the discussion of baseline protections in the proposed rule is inconsistent with how baseline protections are described and assessed in the DEA. Specifically, the commenter asserted that the proposed rule states that current protections are inadequate and do not address threats to the species and its habitat, whereas the DEA states that over 90 percent of the proposed critical habitat for the acuña cactus has baseline protections.

Our Response: Baseline protections are related to the listing of a species as an endangered or threatened species under the Act rather than the designation of critical habitat. In the proposed listing rule, we considered whether the existing regulatory mechanisms were adequate to alleviate the identified threats. The DEA evaluated only the incremental impacts of critical habitat designation. Accordingly, the conclusion that over 90 percent of the proposed critical habitat for the acuña cactus is subject to baseline protections is based on the species being listed under the Act.

(17) *Comment:* One commenter stated that the DEA did not adequately account for the possibility of private projects being subject to a Federal nexus, and, in turn, does not account for potential modification of these projects as a result of section 7 consultation.

Our Response: Approximately 4,690 ha (11,590 ac) (18 percent) of the areas proposed as critical habitat for the acuña and Fickeisen plains cacti are privately owned. The economic analysis discusses the potential for a Federal nexus on private lands associated with livestock grazing and voluntary on-the-ground habitat improvement projects. For both activities, the DEA discussed the potential for Federal funding of these activities on private lands to trigger section 7 consultation and forecasted one programmatic consultation with the respective action agency for future projects that may affect proposed critical habitat for the cacti on private lands. The FEA has been revised to include consideration of additional activities on private lands within acuña cactus Unit 2.

(18) *Comment:* One commenter suggested that section 7 consultation could be triggered for projects implemented in the town of Ajo as the result of Federal funding under the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant program.

Our Response: We contacted Pima County's Community Development Block Grant (CDBG) Program. According to discussions with the Program Coordinator, there are two projects currently under way that are funded by the Pima County CDBG program in the town of Ajo and which appear to fall within areas proposed as critical habitat in acuña cactus critical habitat Unit 2. However, both projects involve improvements to existing structures and do not include any ground-disturbing activities that would trigger section 7 consultation.

Section 7 consultation may be triggered for future projects funded under the Pima County CDBG program that involve new construction or ground-disturbing activities. The Pima County CDBG Program Coordinator indicated, however, that it is difficult to forecast projects that may occur in the future. Selection for funding under the Pima County CDBG program follows an annual cycle and is based on a range of factors, including the level of funding provided by HUD, an assessment of feasibility, need, and benefits, and local priorities as determined by the Pima County Board of Supervisors. At this time, the Pima County CDBG program is not aware of any new projects that involve ground-disturbing activities within the area proposed as critical habitat in the town of Ajo. As a result, this analysis does not estimate any future section 7 consultations related to Pima County's CDBG program. To the extent that new projects funded by the Pima County CDBG program include ground-disturbing activities over the next 20 years, this analysis may underestimate costs in Ajo Unit 2 associated with section 7 consultations. However, this assumption only affects the estimated administrative costs of section 7 consultation. As a result, any future incremental impacts are likely to be minor. The FEA has been revised to include this new information about potentially affected activities related to the CDBG program in the town of Ajo.

(19) *Comment:* One commenter suggested that the DEA fails to conduct a proper Regulatory Flexibility Analysis (RFA) for the town of Ajo, which is a small governmental jurisdiction based on a 2010 population of 3,304.

Our Response: A portion of the town of Ajo overlaps proposed acuña critical habitat in Ajo Unit 2. While we agree that the town of Ajo is a small governmental entity, RFAs are required for small governmental entities only when those entities are also considered directly regulated entities. In the case of critical habitat designation for the acuña and Fickeisen plains cacti, the only directly regulated entities are the Federal agencies required to consult under section 7 of the Act. As such, the town of Ajo is not considered a directly regulated entity, and an RFA, therefore, is not required.

(20) *Comment:* Two commenters asserted that the DEA fails to consider impacts to mining as a result of critical habitat designation for the acuña cactus. Specifically, the comments note that proposed habitat for acuña cactus in Ajo Unit 2 is in an area with historically active mines, as well as an area with potential for future mining.

Our Response: A discussion of mining activities within areas proposed as critical habitat for the acuña cactus in Ajo Unit 2 has been added to the FEA. Mining activities in this area may have a Federal nexus for section 7 consultation through the Federal permitting process with such action agencies as the BLM. Within Ajo Unit 2, at least one inactive copper mine and several unpatented mining claims overlap areas proposed as critical habitat. However, there is significant uncertainty regarding when, or if, any of these areas will be actively mined within the 20-year time period for this analysis. Accordingly, the FEA does not forecast any incremental impacts associated with these mining activities. To the extent that any of the mining resources present in Ajo Unit 2 are actively developed over the next 20 years, this analysis may underestimate the administrative costs associated with section 7 consultations. As Ajo Unit 2 is considered to be occupied by the acuña cactus, costs associated with implementing any conservation measures would be considered baseline impacts.

(21) *Comment:* One commenter asserted that the DEA fails to assess potential impacts to energy supply distribution or use from the designation of critical habitat for the acuña cactus, and, therefore, is not in compliance with Executive Order 13211.

Our Response: Executive Order 13211 states that Federal agencies must prepare and submit a "Statement of Energy Effects" for all "significant energy actions." The Office of Management and Budget provided guidance for implementing the Executive Order, and described various outcomes that may constitute "a significant adverse effect." These are described in A–4 of the FEA. As described in Chapter 3 of the FEA, critical habitat designation for the Fickeisen plains cactus is anticipated to affect uranium mining. Impacts to uranium mining, however, are limited to the administrative costs of one formal consultation for the EZ Mine, totaling less than $900 in costs for the managing company, Energy Fuels Inc., over the 20-year period of analysis. The magnitude of this consultation cost is not anticipated to reduce fuel production or energy production, or increase the cost of energy production or distribution in the United States in excess of 1 percent. Alternatively, as described in Chapter 3 of the FEA, critical habitat designation for the acuña cactus is not anticipated to affect mining. Therefore, the designation of critical habitat for either species does not exceed any of the thresholds provided by the Office of Management and Budget's guidance and is not considered a "significant energy action." Appendix A of the FEA has been updated to reflect this finding.

Summary of Changes From the Proposed Rule

Since the publication of the October 3, 2012 (77 FR 60509), proposed rule to list and designate critical habitat for the acuña cactus and Fickeisen plains cactus, we have made the following changes in the final critical habitat rules:

(1) Based on information received from public comments, we reevaluated the designation of the Dripping Spring acuña cactus critical habitat subunit in OPCNM, Arizona. The proposed rule outlined criteria for designation of critical habitat, which included that unoccupied areas with suitable acuña cactus habitat and that receive higher mean winter precipitation were necessary for the conservation of the species. The additional information provided during the public comment period indicated that the Dripping Spring subunit was unoccupied yet does not receive 29.7 cm (11.66 in) of winter rainfall. As a result, we determined that it was not essential for acuña cactus conservation and did not include it in this final critical habitat designation, thus removing 1,591 ha (3,931 ac) of proposed critical habitat from Unit 1.

(2) Based on information received from public comments, we excluded lands owned and managed by the Tohono O'odham Nation, Arizona, from the designation of critical habitat for the acuña cactus. Natural resources management already in place on the Tribe aids in the conservation of the species. As a result, 156 ha (385 ac) of critical habitat were removed from acuña cactus Unit 3.

(3) Based on information received from public comments, including a revised section of an existing INRMP, we exempted lands owned and managed by the U.S. Air Force on the BMGR, Arizona, from the designation of critical habitat for the acuña cactus. Natural resources management for this species, as outlined in the revised INRMP, aids in the conservation of the acuña cactus. As a result, 378 ha (935 ac) of proposed critical habitat were removed from Unit 3.

(4) Based on information received from public comments, we reevaluated acuña cactus critical habitat in areas receiving total annual precipitation exceeding 29.7 cm (11.66 in). We reassessed this habitat based on areas receiving 29.7 cm (11.66 in) or more of winter precipitation only. As a result, we determined that no areas in southern Arizona that contain the geology, elevation, and vegetation communities required by acuña cactus support this level of precipitation concentrated within the winter months. Therefore, in this final critical habitat designation, there are no critical habitat areas for the acuña cactus that receive 29.7 cm (11.66 in) or more of winter precipitation. As a result, 12,113 ha (29,933 ac) of proposed critical habitat were removed from multiple units. This issue is discussed in further detail in the revised proposed critical habitat designation (78 FR 40673, July 8, 2013).

(5) Based on information received from public comments, we excluded 3,865 ha (9,554 ac) of Tribal land from the final Fickeisen plains cactus critical habitat. Navajo Nation lands excluded include the entire Tiger Wash Unit (Unit 6), the entire Little Colorado River Overlook Unit (Unit 7), and portions of the Gray Mountain subunit (Subunit 8b) of the proposed Gray Mountain Unit (Unit 8). Natural resources management already in place on and documented in a new management plan for the Navajo Nation aids in the conservation of the species.

(6) Based on information received from public comments, we excluded from the Fickeisen plains cactus final critical habitat designation 8,139 ha (20,113 ac) of land that is either: (1) Owned by the Babbitt Ranches, LLC; or (2) managed by the Babbitt Ranches, LLC, but owned by the State and subject to land closure. The excluded area includes the entire proposed Cataract Canyon Unit and private land in the Mays Wash subunit. Exclusion of these lands as critical habitat will allow us to maintain a cooperative working

relationship with the Babbitt Ranches, LLC, and we expect that Babbitt Ranches, LLC, will continue to protect and manage the Fickeisen plains cactus habitat on their lands.

(7) Based on new information received during the public comment periods, we removed the Snake Gulch Unit (945 ha (2,335 ac)) from the final designation of Fickeisen plains cactus critical habitat, because the unit is no longer considered occupied, and we determined that it is not essential to the conservation of the species. We added the South Canyon Unit (110 ha (272 ac)) on U.S. Forest Service (USFS) land where occupancy was verified in 2013.

The rule revising 50 CFR 424.12 was published on February 11, 2016 (81 FR 7413), and became effective on March 14, 2016. As stated in that rule, the revised version of § 424.12 applies only to rulemakings for which the proposed rule is published after that date. Thus, the prior version of § 424.12 will continue to apply to any rulemakings for which a proposed rule was published before that date. Since the proposed rule for acuña cactus and Fickeisen plains cactus critical habitat was published on October 3, 2012, this final rule follows the version of § 424.12 that was in effect at that time.

Critical Habitat

Background

It is our intent to discuss below only those topics directly relevant to the designation of critical habitat for the acuña cactus and Fickeisen plains cactus. For a complete description of the life history and habitat needs of the acuña cactus and Fickeisen plains cactus, see the *Background* section in the final listing rule published on (78 FR 60608, October 1, 2013).

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) of the Act would apply, but even in the event of a destruction or adverse modification finding, the obligation of the Federal action agency and the landowner is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features within an area, we focus on the principal biological or physical constituent elements (primary constituent elements such as roost sites, nesting grounds, seasonal wetlands, water quality, tide, soil type) that are essential to the conservation of the species. Primary constituent elements are the specific elements of physical or biological features that provide for a species' life-history processes, and are essential to the conservation of the species.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. We designate critical habitat in areas outside the geographical area occupied by a species only when a designation limited to its range would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, other unpublished materials, or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) the Act's section 9 prohibitions on taking any individual of the species, indicating taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

Acuña Cactus

Physical or Biological Features

In accordance with sections 3(5)(A)(i) and 4(b)(1)(A) of the Act and regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied by the species at the time of listing to designate as critical habitat, we consider the physical or biological features that are essential to the conservation of the species and which may require special management considerations or protection. These include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, or rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historical, geographic, and ecological distributions of a species.

We derive the specific physical or biological features required for the acuña cactus from studies of this species' habitat, ecology, and life history as described in the Critical Habitat section of the proposed rule to designate critical habitat published in the **Federal Register** on October 3, 2012 (77 FR 60509), and in the information presented below. Additional information can be found in the final listing rule (78 FR 60608; October 1, 2013). We have determined that the physical or biological features described below are essential for the acuña cactus.

Habitat for Individual and Population Growth, Including Sites for Germination, Pollination, Reproduction, Pollen and Seed Dispersal, and Seed Banks

Pollination and Pollen Dispersal—Preservation of the mix of species and interspecific interactions they encompass greatly improves the chances for onsite survival of rare species (Tepedino *et al.* 1996, p. 245). Bee nesting habitat, foraging plants, and corridors must be preserved to protect the acuña cactus (Buchmann 2012, pers. comm.; McDonald 2007, p. 4). The acuña cactus relies solely on the production of seeds for reproduction with pollination highly linked to the acuña cactus' survival. A lack of pollinators would lead to a reduction of seed production that would lead, in turn, to a gradual reduction in the seed bank (Wilcock and Neiland 2002, p. 276). Although viability of seed in the seed bank is unknown, germination trials in the greenhouse suggest the seeds are short-lived (Rutman 2007, p. 7).

Successful pollination depends on the pollinator species and the distance the pollinator can travel between flowers (McDonald 2005, p. 15). Acuña cacti are pollinated by a suite of bees from the Andrenidae, Anthophoridae, Anthophorinae, Halictidae, and Megachilidae families; however, the most abundant, robust, and consistent visitors in a 2-year study at OPCNM were the leafcutter bee (*Megachile palmensis*) and the cactus bee (*Diadasia rinconis*) (Johnson 1992, p. 406). Leafcutter and cactus bees are native cactus specialist bees requiring a sufficient quantity of acuña and other cacti pollen throughout their foraging season to provision their nests and support their own survivorship (Blair and Williamson 2008, p. 428).

No studies of pollinator dispersal distance have been conducted for the acuña cactus; however, in a study of a similar rare cactus in Arizona's Sonoran Desert, the *Coryphantha scheeri* var. *robustispina* (Pima pineapple cactus), McDonald (2005, p. 29) determined that the maximum distance the cactus bees travelled between Pima pineapple cactus individuals was 900 m (2,953 ft). The maximum distance travelled by the leafcutter bee is not known, though it is thought to be less than this (Buchmann 2012, pers. comm.). Because of the similarity of the acuña cactus and Pima pineapple cactus, we estimate that 900 m (2,953 ft) around individual acuña cacti is needed to support pollinator foraging, nesting, and survivorship.

Therefore, based on our review of the best available information, we identify a pollination area with a radius of 900 m (2,953 ft) around each individual acuña cactus plant as a physical or biological feature of acuña cactus habitat.

Seed Dispersal, Germination, Growth, and Seed Banks—Bare soils within the seed dispersal range of the acuña cactus are necessary for recruitment and soil seed banking. Primary and secondary dispersal of these seeds can occur via a number of mechanisms including gravity, ants, wind, or rain (Butterwick 1982 to 1992, entire; Rutman 1996b, pers. comm.; Rutman 2001, pers. comm.; Anderson 2011, p. 1). Primary dispersal is the movement of seeds short distances from the plant, whereas secondary dispersal involves the redistribution of seeds by living (*e.g.*, insects) or non-living (*e.g.*, wind) factors (van Rheede van Oudtshorrn and van Rooyen 1999, pp. 186–187).

As evidenced by their commonly clumped habit, the majority of the acuña cactus seeds are dispersed by gravity; that is, they fall very close to the mother plant, which serves as a nurse plant for germination (Johnson *et al.* 1993, p. 178). With this type of dispersal, the distance seeds travel is limited. The immediate environment of the mother plant is typically highly suitable for establishment, and closely dispersed seeds have a better chance of germination, establishment, and survival than seeds dispersed by other mechanisms (van Rheede van Oudtshorrn and van Rooyen 1999, p. 91).

Ants have been reported to both transport and consume the seeds of the acuña cactus (Butterwick 1982 to 1992, entire; Rutman 1996b, pers. comm.; Rutman 2001, pers. comm.; Anderson 2011, p. 1). Transported seeds may be dropped, discarded, or buried at either an appropriate or inappropriate depth for germination and emergence (van Rheede van Oudtshorrn and van Rooyen 1999, p. 15). Transported seed has the benefit of reduced competition from other seeds and reduced rodent predation that more commonly occurs near the mother plant (O'Dowd and Hay 1980, p. 536; Vander Wall *et al.* 2005, p. 802). The maximum distance seeds are dispersed by ants is typically less than 3 m (10 ft) and rarely more than 10 m (33 ft) (van Rheede van Oudtshorrn and van Rooyen 1999, p. 186).

The maximum distance seeds are dispersed by wind depends on many factors including the height of the plant, characteristics of the surrounding vegetation, seed mass and size, and wind conditions (van Rheede van Oudtshorrn and van Rooyen 1999, p. 186). Secondary dispersal by wind can be farther in deserts, where vegetation is widely spaced and interspaces between trees and shrubs support wind velocities as much as four times higher than under trees and shrubs (van Rheede van Oudtshorrn and van Rooyen 1999, p. 187). Wind-blown soil, litter, and small seeds accumulate under shrubs and trees, or in soil surface depressions (Shreve 1942, p. 205; van Rheede van Oudtshorrn and van Rooyen 1999, p. 187).

Dispersal of seed from rain wash or sheet flow (downslope movement of water in a thin, continuous flow) over the ground is considered to occur across a relatively short distance; in hot deserts, many plants disperse seed by rain (van Rheede van Oudtshorrn and van Rooyen 1999, pp. 69, 76). The distance that the acuña cactus seeds travel by either wind or water is not known; however, spacing of associated nurse trees and shrubs where soil, litter, and seed could accumulate is roughly 8 m (26 ft). This number was determined by using the average height of the largest tree associate, *Cercidium microphyllum* (palo verde) (Shreve 1942, pp. 202–203; Kearney and Peebles 1951, p. 407).

Therefore, based on our review of the best available information regarding the maximum distance that seeds may disperse, and within which the acuña cactus seed banks, seedling establishment, and seedling growth can occur, we identify bare soils immediately adjacent to and within 10 m (33 ft) of existing reproductive acuña cactus plants as a physical or biological feature of acuña cactus habitat.

Appropriate Geological Layers and Topography that Support Individual Acuña Cactus Plants

Geology—Bedrock and soil chemistry could help explain the current distribution of the acuña cactus across small islands of habitat in southern Arizona. Various reports describe the acuña cactus occurring on both fine- and coarse-textured soils derived from volcanic, granitic, and metamorphic rocks (Geraghty and Miller 1997, p. 3; Rutman 2007, pp. 1–2). Specifically, parent rock materials of preferred habitat include extrusive felsic volcanic rocks of rhyolite, andesite, and tuff, and intrusive igneous rocks composed of granite, granodiorite, diorite, and quartz monzonite (Rutman 2007, pp. 1–2).

We applied this knowledge of the acuña cactus geologic habitat preference by analyzing geology features and known plant locations attained for populations occurring within the United States using Geographic Information Systems (GIS). We determined 11 geologic feature classes that occur within the known locations of the acuña cactus in the United States (Arizona State Land Department 2012, GIS data layer). These feature classes can be summarized as volcanic rocks from the middle Miocene to Oligocene and from the Jurassic; granitoid rocks from the early Tertiary to Late Cretaceous and from the Jurassic; granitic rocks from the early Tertiary to Late Cretaceous; metamorphic rocks from the early Proterozoic; and surficial deposits from the Holocene to the latest Pliocene. Therefore, based on our review of the best available information regarding bedrock geology and associated soils required by the acuña cacti, we identify the presence of any one of these 11 feature classes as a physical or biological feature of acuña cactus habitat. These feature classes can be further summarized to include the following rock types as identified in the literature for this species: rhyolite, andesite, tuff, granite, granodiorite, diorite, or Cornelia quartz monzonite (Rutman 2007, pp. 1, 2).

Topography—The acuña cactus is known to occur in valley bottoms and on ridge tops or small knolls, on slopes up to 30 percent (Phillips *et al.* 1982, p. 4; Geraghty and Miller 1997, p. 3). We applied this knowledge of the acuña topographic habitat preference by analyzing topography features using a digital elevation model in GIS. Therefore, based on our review of the best available information regarding topography, we identify valley bottoms, ridge tops, and small knolls with slopes of 30 percent or less as a physical or biological feature of acuña cactus habitat.

Appropriate Vegetation Community and Elevation Range That Support Individual Acuña Cactus Plants

Nurse Plants—Known populations of acuña cactus have been reported from between 365 and 1,150 m (1,198 to 3,773 ft) elevation within the paloverde-cacti-mixed scrub series of the Arizona Upland Subdivision of the Sonoran Desert-scrub (Brown 1994, p. 200; Arizona Rare Plant Guide Committee 2001, unnumbered pages; Arizona Game and Fish Department (AGFD) 2011, entire). This scrubland or low woodland contains leguminous trees, shrubs, and succulents including palo verde, *Olneya tesota* (ironwood), *Larrea tridentata* var. *tridentata* (creosote bush), *Ambrosia* spp. (bursage), and *Carnegia gigantea* (saguaro). The acuña cactus seedlings benefit from the protection of these native Sonoran Desert trees and shrubs, as well as other larger acuña cacti that act as nurse plants by providing protection from temperature extremes and physical damage (Felger 2000, p. 208; Johnson *et al.* 1993, p. 178). The acuña cactus individuals are generally more robust next to nurse plants, as opposed to in open, exposed locations (Felger 2000, p. 208). Therefore, based on the information above, we identify the presence of creosote bush, ironwood, palo verde, and other native protective plants to be a physical or biological feature necessary for acuña cactus habitat.

Native Vegetation Dominance—The acuña cactus habitat should be relatively free from perennial grass invaders as these alter structure, function, dominance, and disturbance regimes, and have been shown to drastically lower species diversity within the Sonoran Desert (Olsson *et al.* 2012, p. 10). Such changes have great potential to impact acuña cacti and their pollinators. In addition, such introduced grasses as *Pennisetum ciliare* (buffelgrass) form continuous mats and remove open bare ground for nesting bees such as *Diadasia* spp. (Buchmann 2007, p. 13). These bees move nesting sites yearly to shed parasites, thereby requiring the continued availability of sandy, well-drained, bare ground available to create nests (Buchmann 2012, pers. comm.). Therefore, based on our review of the best available information, we identify Sonoran Desert-scrub habitat dominated by native plant species to be a physical or biological feature necessary for acuña cactus habitat.

Primary Constituent Elements for the Acuña Cactus

Under the Act and its implementing regulations, we are required to identify the physical or biological features essential to the conservation of acuña cactus in areas occupied at the time of listing, focusing on the features' primary constituent elements. We consider primary constituent elements to be the elements of physical or biological features that provide for a species' life-history processes and are essential to the conservation of the species.

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the acuña cactus are:

(i) Native vegetation within the Paloverde-Cacti-Mixed Scrub Series of the Arizona Upland Subdivision of the Sonoran Desert-scrub at elevations between 365 to 1,150 m (1,198 to 3,773 ft). This vegetation must contain predominantly native plant species that:

a. Provide protection to the acuña cactus. Examples of such plants are creosote bush, ironwood, and palo verde.

b. Provide for pollinator habitat with a radius of 900 m (2,953 ft) around each individual, reproducing acuña cactus.

c. Allow for seed dispersal through the presence of bare soils immediately adjacent to and within 10 m (33 ft) of individual acuña cactus.

(ii) Soils overlying rhyolite, andesite, tuff, granite, granodiorite, diorite, or Cornelia quartz monzonite bedrock that are in valley bottoms, on small knolls, or on ridgetops, and are generally on slopes of less than 30 percent.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. All areas designated as critical habitat as described below may require some level of management to address the current and future threats to the physical or biological features essential to the conservation of the acuña cactus. In all of the described units, special management may be required to ensure that the primary constituent elements for the cactus are conserved and the habitat provides for the biological needs of the cactus. Some of the management activities that could ameliorate these threats include, but are not limited to, those discussed below.

(1) Practice livestock grazing in a manner that maintains, improves, and expands the quantity and quality of Sonoran desertscrub habitat. Special management considerations or protection may include the following: manage livestock grazing sustainably with the natural landscape by determining appropriate areas, seasons, and use consistent within the carrying capacity of rangeland in response to current and future drought and warming trends; improve monitoring and documentation of grazing practices; manage cattle and feral hoofed mammals (ungulates) (*e.g.,* burros) to reduce the risk of plants trampled and soil compaction; and manage for other small mammal species to restore desired processes to increase habitat quality and quantity.

(2) Minimize construction of new border control facilities, roads, towers, or fences. Special management considerations or protections may include the following: protect lands that support suitable habitat such that destruction of individual plants and their habitat is minimized and habitat is preserved.

(3) Manage or protect native Sonoran desertscrub vegetation communities from recreational impacts. Special management considerations or protection may include the following: manage trails, campsites, and off-road vehicles (ORVs); reduce the likelihood of wildfires affecting the acuña cactus populations and nearby plant communities.

(4) Protect suitable habitat from mineral development and associated infrastructure (new access roads). These activities could result in direct plant and habitat loss, or alteration by removing or degrading soils to such an extent that the soils would no longer support the growth of the acuña cactus. Special management considerations or protection may include the following: protect lands that support suitable habitat such that destruction is minimized and habitat is preserved.

(5) Manage for nonnative, invasive species, such as buffelgrass, by minimizing conditions that may promote or encourage encroachment or establishment of nonnative, invasive species and restore or reestablish conditions that allow native plants to thrive. Within the range of the acuña cactus, the establishment and success of nonnative, invasive species has been a result of historic land use and management practices such as grazing, wildfire suppression actions, mining, and ORV use. Actions have been taken by some land management agencies to reduce the spread of invasive species and reduce the risk of wildfire they pose from creating fine fuel loads. Nonnative, invasive species occur near acuña cactus populations and may pose a threat through competition for resources or increase the risk of fire. Special management considerations or protection may include the following: Prevent or restrict establishment of nonnative, invasive species; minimize ground-disturbing activities that may facilitate their spread; conduct post-disturbance restoration activities such as native plant propagation; practice active removal of nonnative, invasive plant species and targeted herbicide application (provided herbicides can be shown not to negatively impact the acuña cactus or the native pollinators); and improve monitoring and documentation on a site-by-site basis where nonnative, invasive species are present in occupied habitat to assess any effect (beneficial or negative) they pose of the cactus.

These management activities will protect the physical or biological features essential to the conservation of the acuña cactus by reducing the direct and indirect effects of habitat loss, alteration, or fragmentation; preserving the geology and soils that form the basis of its habitat; and maintaining the native vegetation communities and pollinators.

In summary, the primary constituent elements of the acuña cactus habitat may be impacted by livestock grazing; U.S.-Mexico border activities; recreational impacts; mineral development and associated transportation infrastructure; and nonnative, invasive species. Currently some of these threats are not identified to occur at a level that threatens populations with extirpation; however, without management of these threats, they could rise to this level. The units designated as critical habitat within the geographical area occupied by the species at the time of listing contain the physical or biological features essential to the conservation of the acuña cactus. Special management considerations or protection may be required to eliminate, or reduce to a negligible level, the threats affecting each unit or subunit and to preserve and maintain the essential features that the critical habitat units and subunits provide to the cactus.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We reviewed available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulations at 50 CFR 424.12(b), we considered whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We are designating critical habitat in areas within the geographical area occupied by the species at the time of listing as described in the final rule to list the acuña cactus and the Fickeisen plains cactus (see the "Distribution and Range" section of the final listing rule (78 FR 60608, October 1, 2013)) and that contain one or more of the identified primary constituent elements. We are not designating any additional areas outside those currently occupied by the species as critical habitat for acuña cactus.

We reviewed available information and supporting data that pertain to the habitat requirements of the acuña cactus. This information included research published in peer-reviewed articles and presented in academic theses and agency reports, as well as data collected from long-term monitoring plots, interviews with experts, and regional climate data and GIS coverage. Sources of information include, but are not limited to: Brown 1994, Buchmann 2007, Butterwick 1982–1992, Felger 2000, Holm 2006, Johnson 1992, Johnson *et al.* 1993, McDonald 2007, Olsson *et al.* 2012, Phillips *et al.* 1982, National Park Service 2011a, National Park Service 2011b, Rutman 2007, van Rheede van Oudtshorrn and van Rooyen 1999, and Western Regional Climate Center 2012. Based on this information, we developed a strategy for determining which areas meet the definition of critical habitat for acuña cactus.

Occupied Area at the Time of Listing

In identifying proposed critical habitat units for acuña cactus, we proceeded through a multi-step process. We obtained all records for acuña cactus distribution from AGFD, as well as both published and unpublished documentation from our files. There is no information on the historical range of this species; survey results confirm that plant distribution in the United States comprises disjunct occupied habitat in two general areas of south-central Arizona.

Our approach to delineating critical habitat units was applied in the following manner:

(1) We overlaid acuña cactus locations into a GIS database. This provided us with the ability to examine slope, aspect, elevation, geologic type, vegetation community, and topographic features. These data points verified and slightly expanded the previously recorded elevation ranges for acuña cactus.

(2) In addition to the GIS layers listed above, we then included a 900-m (2,953-ft) pollination area around known populations to ensure that all potential pollinators would have a sufficient land base to establish nesting sites and to provide pollinating services for acuña cactus, as described in *Physical or Biological Features* for the acuña cactus above.

(3) We then drew critical habitat boundaries that captured the locations elucidated under (1) and (2) above. Critical habitat designations were then mapped using Albers Equal Area (Albers) North American Datum 83 (NAD 83) coordinates.

We defined six critical habitat units and subunits within the current distribution of the species in two general areas of south-central Arizona. The units and subunits contain approximately 2,580 individuals. Within these units and subunits, several geologic, topographic, elevation, slope, and vegetation community features have been defined, which in combination create acuña cactus habitat that is essential to the conservation of the species, though not all lands containing this combination support the acuña cacti. Although we no longer regard additional unoccupied areas as essential for the conservation of the species (refer to the revised proposed critical habitat designation for the acuña cactus and the Fickeisen plains cactus (78 FR 40673, July 8, 2013), we recognize that areas containing the physical or biological features necessary for the acuña cactus and which receive higher precipitation levels may be useful for *ex situ* (offsite) conservation measures at a future time.

When determining critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features for the acuña cactus. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text and are not designated as critical habitat. Therefore, a Federal action involving these lands would not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0025, on our Internet sites *http://www.fws.gov/southwest/es/arizona/,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Critical Habitat Designation for the Acuña Cactus

We are designating six units as critical habitat for the acuña cactus. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the acuña cactus. The six units we are designating as critical habitat are: (1) Organ Pipe Cactus National Monument, (2) Ajo, (3) Sauceda Mountains, (4) Sand Tank Mountains, (5) Mineral Mountain, and (6) Box O Wash. All six units were occupied by the acuña cactus at the time of listing. The approximate area of each critical habitat unit is shown in Table 1.

TABLE 1—DESIGNATED CRITICAL HABITAT UNITS FOR THE ACUÑA CACTUS

Unit or subunit	Federal		State		Private		Total	
	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac
1—Organ Pipe Cactus National Monument Unit	2,416	5,971	0	0	0	0	2,416	5,971
2—Ajo Townsites Subunit	89	220	0	0	330	815	419	1,035
2—Ajo Little Ajo Mountains Subunit	106	263	0	0	141	347	247	610
3—Sauceda Mountains Unit	1,102	2,724	0	0	0	0	1,102	2,724
4—Sand Tank Mountains Unit	549	1,355	0	0	0	0	549	1,355
5—Mineral Mountain Unit	570	1,408	217	537	0	0	787	1,945
6—Box O Wash Subunit A	4	9	1,348	3,332	369	913	1,721	4,253
6—Box O Wash Subunit B	0	0	158	391	102	251	260	642

TABLE 1—DESIGNATED CRITICAL HABITAT UNITS FOR THE ACUÑA CACTUS—Continued

Unit or subunit	Federal		State		Private		Total	
	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac
Total	4,836	11,950	1,723	4,260	942	2,326	7,501	18,535

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the acuña cactus, below.

Unit 1: Organ Pipe Cactus National Monument

The unit consists of 2,416 ha (5,971 ac) within OPCNM in southwestern Pima County, Arizona. The unit is on federally owned land administered by the National Park Service. Land within this unit was occupied at the time of listing with the largest known population of the acuña cactus, approximately 2,000 individuals. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus. This unit helps to maintain the geographical range of the species and provide opportunity for population growth. This unit also provides a core population of the species.

Grazing and mining are not permitted within OPCNM; however, nonnative, invasive species issues and off-road border-related activities do occur in OPCNM. Special management considerations or protection may be required within this unit to address off-road border-related human disturbances or to prevent or remove nonnative, invasive species within the acuña cactus habitat.

Unit 2: Ajo

Unit 2 is located in and near the town of Ajo in southwestern Pima County, Arizona. The unit consists of two subunits totaling 666 ha (1,645 ac). This unit contains 195 ha (483 ac) of federally owned land and 470 ha (1,162 ac) of private land. The Federal land is administered by the BLM. This entire unit helps to maintain the geographical range of the species and provide opportunity for population growth. This unit also provides a core population of the species.

Subunit 2a: Townsites—Subunit 2a consists of 330 ha (815 ac) of private land and 89 ha (220 ac) of BLM land in and around the town of Ajo, Arizona. This subunit comprises four separate populations of the acuña cactus on private and BLM lands, which are close enough in proximity to be combined within the 900-m (2,953-ft) radius defined for pollinators. Lands within this subunit are occupied at the time of listing; the combined number of plants occurring within this subunit is 70. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

Subunit 2b: Little Ajo Mountains—Subunit 2b consists of 106 ha (263 ac) of BLM lands and 141 ha (347 ac) of private lands south of the town of Ajo, Arizona. Lands within this subunit are occupied at the time of listing, containing seven individual plants. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

The features essential to the conservation of the species within both subunits are threatened by mining; urban development; off-road U.S.-Mexican border activities; and nonnative, invasive species issues. Special management considerations or protection may be required within the subunits to minimize habitat fragmentation; to minimize disturbance to acuña cactus individuals, soil, and associated native vegetation; and to prevent or remove nonnative, invasive species within the acuña cactus habitat.

Unit 3: Sauceda Mountains

Unit 3 is located in the Sauceda Mountains of northwestern Pima and southwestern Maricopa Counties, Arizona. We are excluding approximately 156 ha (385 ac) of Tohono O'odham land and exempting 378 ha (935 ac) of BMGR land from this unit, leaving 1,102 ha (2,724 ac) of federally owned land administered by the BLM (refer to the Exclusions and Exemptions sections of the preamble to this rule). This unit comprises four separate populations that are close enough in proximity as to be combined within the 900-m (2,953–ft) radius defined for pollinators. Lands within this unit were occupied at the time of listing; the combined number of plants occurring within this unit is 212. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus. This unit helps to maintain the geographical range of the species and provide opportunity for population growth. This unit also provides a core population of the species.

The features essential to the conservation of the species within the unit are threatened by mining; grazing; nonnative, invasive species issues; and off-road U.S.-Mexican border activities. Special management considerations or protection may be required within the unit to minimize habitat fragmentation; to minimize disturbance to individual acuña cactus individuals, soil, and associated native vegetation; and to prevent or remove nonnative, invasive species within acuña cactus habitat.

Unit 4: Sand Tank Mountains

Unit 4 consists of 549 ha (1,355 ac) within the Sonoran Desert National Monument of southwestern Maricopa County, Arizona. The unit is on federally owned land administered by the BLM. Land within this unit was occupied at the time of listing; the combined number of plants occurring within this unit is 200 individuals in 3 separate populations. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus. This unit helps to maintain the geographical range of the species and provide opportunity for population growth. This unit also provides a core population of the species.

Grazing and mining are not permitted within the Sonoran Desert National Monument; however, off-road border-related activities; nonnative, invasive species issues; and trespass livestock grazing may occur in this unit. Special management considerations or protection may be required within this unit to minimize disturbance to acuña cactus individuals, the soil, and associated native vegetation; and to prevent or remove nonnative, invasive species within acuña cactus habitat.

Unit 5: Mineral Mountain

Unit 5 consists of 787 ha (1,945 ac) on Mineral Mountain of north-central Pinal County, Arizona. This unit contains 570 ha (1,408 ac) of federally owned land and 217 ha (537 ac) of State-owned land. The Federal land is administered by the BLM (569 ha (1,406 ac)) and the Bureau of Reclamation (1 ha (2 ac)).

This unit contains 5 separate known populations totaling 33 individuals on lands administered by the BLM and the State of Arizona. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus. This unit helps to maintain the geographical range of the species and provide opportunity for population growth. This unit also provides a core population of the species.

Livestock grazing and ORV activity occur in this unit, and mining occurs nearby. Nonnative, invasive species issues may occur in or nearby this unit. Special management considerations or protection may be required within the unit to minimize habitat fragmentation; to minimize disturbance to acuña cactus individuals, soil, and associated native vegetation; and to prevent or remove nonnative, invasive species within acuña cactus habitat.

Unit 6: Box O Wash

Unit 6 is located near Box O Wash of north-central Pinal County, Arizona. This unit consists of two subunits totaling 1,981 ha (4,895 ac). This unit contains 4 ha (9 ac) of federally owned land, 1,506 ha (3,722 ac) of State-owned land, and 471 ha (1,164 ac) of privately owned land. The Federal land is administered by the BLM. This entire unit helps to maintain the geographical range of the species and provide opportunity for population growth. This unit also provides a core population of the species.

Subunit 6a: Box O Wash A—Subunit 6a consists of 4 ha (9 ac) of BLM land, 369 ha (913 ac) of private land, and 1,348 ha (3,332 ac) of State land east of Florence, Arizona. This subunit comprises two separate populations of the acuña cactus on private and State-owned lands, which are close enough in proximity to be combined within the 900-m (2,953-ft) radius defined for pollinators. Lands within this subunit were occupied at the time of listing; the combined number of plants occurring within this subunit is 11. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

Subunit 6b: Box O Wash B—Subunit 6b consists of 158 ha (391 ac) of State-owned land and 102 ha (251 ac) of private land east of Florence, Arizona. This subunit comprises one population of the acuña cactus on State-owned land; the 900-m (2,953–ft) radius defined for pollinators overlaps into private land. This area was surveyed twice in 2008, with 32 living acuña cacti found in 1 survey and 45 in a second survey. A 2011 survey resulted in no living plants located; however, this was not a complete survey of the area. Since the 2011 survey was not a comprehensive survey, and a relatively large number of plants were found here in 2008, we assume the plants still occur in this subunit. Therefore, we consider lands within this subunit occupied at the time of listing. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus.

Livestock grazing and ORV activity occur within both subunits, and mining occurs nearby. Nonnative, invasive species issues may occur in or nearby this unit. Special management considerations or protection may be required within the subunits to minimize habitat fragmentation; to minimize disturbance to acuña cactus individuals, soil, and associated native vegetation; and to prevent or remove nonnative, invasive species within acuña cactus habitat.

Fickeisen Plains Cactus

Physical or Biological Features

We derive the specific physical or biological features required for the Fickeisen plains cactus from studies of the species' habitat, ecology, and life history as described below. We have determined that the Fickeisen plains cactus requires the following physical or biological features:

Appropriate Topography and Elevation Range That Support Individual Fickeisen Plains Cactus Plants

The Fickeisen plains cactus is a narrow endemic with a wide distribution on the Colorado Plateau in Coconino and Mohave Counties, Arizona. Populations are found at elevations from 1,280 to 1,814 m (4,200 to 5,950 ft) with approximately 1,132 plants in 33 populations documented within an 8,668-square-kilometer (sq km) (3,347-square-mile (sq mi)) range. About 90 percent of individuals occur in Coconino County.

The Colorado Plateau consists of a series of subplateaus that are dissected by major structural features (Foos 1999, pp. 2–4). The Fickeisen plains cactus is found on several subplateaus and tablelands including the Coconino, Kaibab, Kanab, Shivwits, and Uinkaret Plateaus, and House Rock Valley. These landforms are characterized by normal faults (Hurricane, Toroweap, and Sevier Faults), monoclines (Grandview and Black Point Monoclines), synclines (Cataract Syncline), deep-seated canyons (Marble Canyon, Cataract Canyon of the Grand Canyon), and deep washes (Mays Wash) (Billingsley and Dyer 2003, p. 3; Billingsley *et al.* 2006, pp. 1–3; Billingsley *et al.* 2007, pp. 2–3), which form boundaries separating the subplateaus, and act as topographic barriers isolating populations of the Fickeisen plains cactus.

The Fickeisen plains cactus is found exclusively on limestone soils derived predominantly from the Harrisburg Member of the Kaibab Formation. The Harrisburg Member consists of reddish-gray and brownish-gray, slope-forming gypsum, siltstone, sandstone, and limestone; and includes an upper, middle, and lower part. The upper bed consists of gray, cherty limestone that forms the bedrock surface while the middle unit comprises thick, cliff-forming limestone beds and the lower bed consists of slope-forming gypsiferous siltstone, sandstone, limestone, and gypsum (Billingsley 2000, pp. 3–4).

Folding and uplifting of bedrock, basalt flows, and erosional processes across the Colorado Plateau exposes other sedimentary rock formations found in occupied habitat.

The Hurricane Cliffs exposes the Kaibab Formation on the upper part and much of the bedrock surface of the Shivwits and Uinkaret Plateaus, while siltstone, sandstone, and limestone of the Toroweap Formation is well exposed on the lower steep slopes and ledges (Billingsley and Dyer 2003, pp. 3–4). East of the Hurricane Cliffs and in the habitat of the Clayhole Wash population, ledge-forming limestone beds that are separated by slopes of gypsiferous siltsone of the Moenkopi Formation are exposed under Quarterary basalt flows (Billingsley 1994, p. 2). Erosional unconformities separate the Kaibab and Moenkopi Formations in this area (Billingsley *et al.* 2002, p. 3). In House Rock Valley, the Kaibab Formation forms most of the bedrock surface and rims along Marble Canyon. In some places, the Kaibab Formation is covered by siltstone and sandstone of the Moenkopi Formation (Billingsley and Priest 2010, p. 5).

Exposed limestone surfaces include mesas, plateaus, fan terraces, flat to gentle sloping hills, along canyon rims, and washes, which provide habitat to support the cactus. Individuals are found on the western, southwestern, and southern-facing exposures with slopes less than 20 percent (Arizona Rare Plant Committee 2001; AGFD 2011a, p. 2), although most plants are observed on slopes less than 10 percent. The surface material is derived from the erosion of limestone and sandstone in the form of alluvium, colluvium, or eolian deposits.

Based on the above information, we identify mesas, plateaus, terraces, flat to gently sloping hills less than 20 percent slope; margins of canyon rims and desert washes that are overlain with alluvium, colluvium, or eolian deposits, or eolian sand over alluvium; alluvium derived predominantly from limestone of the Harrisburg Member of the Kaibab Formation; and limestone, siltstone, and sandstone of the Toroweap and Moenkopi Formations as a physical or biological feature essential to the conservation of the Fickeisen plains cactus.

Appropriate Soil Structure and Vegetation Community That Support Individual Fickeisen Plains Cactus Plants

The presence of unique soil structure and chemistry may determine where a rare plant species exits. The Fickeisen plains cactus is found on gravelly limestone soils underlain by alluvium. There are several soil series associations that support the Fickeisen plains cactus (Table 2). These share common properties or characteristics of soil that is well-drained, nonsaline to slightly saline with a soil pH from 7.9 to 8.4 (NatureServe 2011; Natural Resources Conservation Service (NRCS) 2012), and shallow (15 to 51 cm (6 to 20 in) to bedrock), although some are moderately deep to very deep (more than 203 cm (80 in) to bedrock). Most Fickeisen plains cacti are found in shallow soils. Fewer plants are found on deeper soils, but these plants may not persist long-term from being water logged after rainstorms or subjected to debris flows. The texture of the surface layer includes gravelly loam, fine sandy loam, gravelly sandy loam, clay loam, cobbly loam, and stony loam (NRCS 2012). The fine-textured and very loose soil texture may enable the plant to be completely buried once retracted (Navajo National Heritage Program (NNHP) 1994, p. 3), thereby protecting the apex from exposure to low temperatures during the winter season. The habitat is also stable with little soil movement following runoff events.

TABLE 2—SOIL CLASS ASSOCIATED WITH THE FICKEISEN PLAINS CACTUS HABITAT

Soil series classification	Percent slope
Dutchman-McCullan complex	1–10
Kinan gravelly loam	1–15
Kinan-Pennell complex	4–15
Mellenthin very gravelly loam	1–25
Mellenthin-Progresso complex	1–7
Mellenthin-Rock outcrop-Torriorthents complex	10–70
Mellenthin-Tanbark complex	5–50
Moenkopie-Goblin complex	5–50
Monierco clay loam	2–15
Monue-Seeg complex	1–6
Pennell cobbly loam	3–10
Pennell gravelly sandy loam	20–45
Saido-Brinkerhoff complex	1–5
Strych very gravelly loam	2–10
Twist sandy loam	2–10
Winona gravelly loam	0–8
Winona stony loam	0–8
Winona-Boysag gravelly loams	0–8
Winona-Rock outcrop complex	15–30 and 30–70

The Fickeisen plains cactus is primarily found in sparsely vegetated areas in full sun. However, habitat in Mohave County, Arizona, supports dense patches of grasses and desert shrubs. Adult Fickeisen plains cacti that are growing underneath a shrub canopy or in partially shaded clumps of grama grass have been observed to be larger and fuller than those growing in fully open areas (Robertson 2011, p. 1). Similar observations have been reported on the Navajo Nation (NNHP 1994, p. 4). Some amount of canopy cover may create suitable microhabitat conditions that enhance Fickeisen plains cactus' survival by providing protection from the sun and wind, and by decreasing the rate of evapotranspiration (Milne 1987, p. 34).

Microbiologic soil crusts are present across areas of the Colorado Plateau and occur near the Fickeisen plains cactus (United States Forest Service (USFS) 1999, entire; BLM 2007a, pp. 3–15). Biological soil crusts are formed by a community of living organisms that can include cyanobacteria, green algae, microfungi, mosses, liverworts, and lichens (Belnap 2006, pp. 361–362). These crusts provide many positive benefits to the larger vegetation community by providing fixed carbon and nitrogen on sparsely vegetated soils, soil stabilization and erosion control, water infiltration, improved plant growth, and seedling germination (Rychert *et al.* 1978, entire; NRCS 1997, pp. 8–10; Floyd *et al.* 2003, p. 1704; Belnap 2006, entire). Although there is no information indicating a relationship between the Fickeisen plains cactus and benefits derived from the soil crust, their presence supports native desert vegetation that also supports the Fickeisen plains cactus habitat.

The specific physiological and soil nutritional needs of the Fickeisen plains cactus are not known at this time. Locations containing apparently suitable habitat on the Arizona Strip have been searched between the years of 1986 and 2010, and no additional individuals or populations have been found to date. The factors limiting the taxon's distribution are unknown, but could be related to microsite differences (such as nutrient availability, soil microflora, soil texture, or moisture). Although we do not have information to fully explain what components the plant prefers, a preliminary soil study on the Kaibab National Forest suggested that sites having higher density of plants occur in gravelly soils and these have higher levels of micro and macro nutrients compared to sandier soils where fewer plants are found. The higher amounts of potassium, nitrate, sodium, zinc, copper, and soluble phosphate in the gravelly soil may be a result of weathering over time (MacDonald (USFS) 2013, pers. comm.). While further investigation is warranted at other populations, it may help distinguish the quality of habitat for the taxon across its range.

Based on the above information, we identify soils from the appropriate soil series that are well-drained, shallow to moderately deep, stable, and consist of gravelly loam, fine sandy loam, gravelly sandy loam, clay loam, and cobbly loam with limestone and chert gravel as a physical or biological feature essential to the conservation of the Fickeisen plains cactus.

Habitat for Individual and Population Growth, Including Sites for Germination, Pollination, Reproduction, Pollen and Seed Dispersal, and Seed Banks

The Fickeisen plains cactus habitat is found within the Great Basin Desert and is associated with the Plains and Great Basin grasslands and Great Basin desertscrub (Benson 1982, p. 764; NatureServe 2011). Dominant native plant species that are commonly associated with these biotic communities include: *Artemisia tridentata* (sagebrush), *Atriplex canescens* (four-wing saltbush), *Atriplex confertifolia* (shadscale), *Bouteloua eriopoda* (black grama), *Bouteloua gracilis* (blue grama), *Bromus* spp. (brome), *Chrysothamnus* spp. (rabbit-bush), *Ephedra torreyana* (Mormon tea), *Kraschenninikovia lanata* (winterfat), *Gutierrezia sarothrae* (broom snakeweed), *Pleuraphis jamesii* (James's galleta), *Achnatherum hymenoides* (Indian ricegrass), *Sphaeralcea* spp. (globe-mallow), and *Stipa* spp. (needlegrass). Other native species that are commonly found include *Agave utahensis* (century plants), *Echinocactus polycephalus* spp. and *Escobaria vivipara* var. *rosea* (foxtail cactus) (Brown 1994, pp. 115–121; Turner 1994, pp. 145–155; Hughes 1996b, p. 2; Goodwin 2011a, p. 4; NatureServe 2011).

These grasslands also support native annuals and perennial flowering plants that support a diversity of native bees and insect pollinators, which are essential for Fickeisen plains cactus reproduction. Reproduction for plant species within the genera of *Pediocactus* occurs by cross-pollination (Pimienta-Barrios and del Castillo 2002, p. 79). Pollinators observed visiting flowers of the Fickeisen plains cactus include hover flies (family Syrphidae), bee flies (family Bombyliidae), mining bees (family Andrenidae), and sweat bees (family Halictidae) (Milne 1987, p. 21; NNHP 1994, p. 3). Although flies may pollinate flowers of the Fickeisen plains cactus when they eat pollen or nectar, the primary pollinators for the Fickeisen plains cactus are believed to be halictid bees from the genera *Lasioglossum, Halictus,* and *Agapostemon,* based on several studied species of *Pediocactus* (Tepedino 2012, pers. comm.).

Since pollination is essential to the conservation of the Fickeisen plains cactus, we evaluated alternatives for determining the effective pollinator distance for the taxon. Foraging distances vary by species and body size (Greenleaf *et al.* 2007, p. 592*),* but the typical flight distances of halictid bees in the genera *Lasioglossum* are 10 to 410 m (33 to 1,345 ft). The foraging distance for the largest bodied bee in the genera *Agapostemon* (sweat bees in the Family Halictidae) is approximately 1,000 m (3,280 ft) (Tepedino 2012, pers. comm.). We believe 1,000 m (3,280 ft) represents a reasonable estimate of the area needed around the Fickeisen plains cactus population to provide sufficient habitat for the pollinator community. As noted above, many other insects likely contribute to the pollination of this species, and some may travel greater distances than others. However, these pollinators may also forage, nest, overwinter, or reproduce within 1,000 m (3,280 ft) of Fickeisen plains cactus. As a result, we considered the Fickeisen plains cactus pollinator area to be 1,000 m (3,280 ft) around individual plants, based on the rationale that pollinators using habitat farther away may not be as likely to contribute to the conservation and recovery of this species.

The Fickeisen plains cactus relies solely on the production of seed for reproduction (Pimienta-Barrios and del Castillo 2002, p. 79). Optimal seed set occurs through visitation and pollination by native bees and other insect pollinators. Seed production in the Fickeisen plains cactus is considered to be low (Hughes 2011, pers. comm.), and most species of *Pediocactus* have poor seed dispersal mechanisms (Benson 1982, p. 750). We do not know the soil moisture, nutrient, or temperature requirements for Fickeisen plains cactus germination. Seedlings are often observed near the parent plant (Goodwin 2011a, p. 9) and do better when shade is provided by a parent or nurse rock (Nobel 1984, p. 316; Milne 1987, p. 34).

Maintaining genetic diversity is essential for persistence of the Fickeisen plains cactus because of its endemism, small population size, and disjunct populations (Tepedino *et al.* 1996, p. 245). In general, maintaining adequate populations of the Fickeisen plains cactus' primary pollinators, which likely depends on the presence and diversity of other native plant species in sufficient numbers within, near, and between populations, is essential to facilitate gene flow (NatureServe 2011). Moreover, maintaining areas with a high diversity of native plant species is necessary to sustain populations of native pollinators (Peach *et al.* 1993, p. 314). Low numbers of abundant flowers offering little reward can lead to low rates of plants visited by pollinators (Wilcox and Neiland 2002, pp. 272–273). As the Fickeisen plains cactus does not reproduce vegetatively, pollination is highly linked to their survival. A lack of pollinators would gradually decrease the number of seeds in the seed bank and the conservation potential for the Fickeisen plains cactus (Wilcock and Neiland 2002, p. 276).

Therefore, based on the best available information above, we identify a pollination area with a radius of 1,000 m (3,280 ft) around each Fickeisen plains cactus that includes native vegetation of the Great Basin desertscrub and Plains and Great Basin grasslands, and habitat for pollinators as a physical or biological feature essential to the conservation of the Fickeisen plains cactus.

Habitats That Are Protected From Disturbance or Representative of the Historical, Geographical, and Ecological Distribution of the Species

The Fickeisen plains cactus has a restricted geographical distribution. Endemic species whose populations exhibit a high degree of isolation are extremely susceptible to extinction from random and non-random, catastrophic, natural or human-caused events. Therefore, the conservation of the Fickeisen plains cactus is dependent on several factors, including, but not limited to: (1) Maintenance of areas of sufficient size and configuration to sustain natural ecosystem components, functions, and processes (such as sun exposure, native shrubs or grasses that provide microhabitats for seedlings, natural fire and hydrologic regimes, preservation of biological soil crusts that support the surrounding vegetation community, and adequate biotic balance to prevent excessive herbivory); (2) protection of the existing substrate continuity and structure; (3) connectivity among clusters of plants within geographic proximity to facilitate gene flow among these sites through pollination activity and seed dispersal; and (4) sufficient adjacent suitable habitat for reproduction and population expansion.

A natural, generally intact surface and subsurface that is free of inappropriate disturbance associated with land use activities (such as trampling and soil compaction from livestock grazing) and associated physical processes such as the hydrologic regime are necessary to provide water, minerals, and other physiological needs for the Fickeisen plains cactus. A natural intact surface and subsurface includes the preservation of soil qualities (texture, slope, rooting depth) to enable the seasonal ability of plants to retract below the subsurface to enter dormancy, but emerge when conditions are favorable. A natural hydrologic regime includes the seasonal retention of soil moisture followed by the drying out of the substrate to promote growth of plants for the following season. These processes enable populations to develop and maintain seed banks, and to provide for successful seedling survival, adult growth, and expansion of populations. The Fickeisen plains cactus must sustain and expand in number if ecological representation of this species is to be ensured. Therefore, based on the information above, we identify natural, generally intact surface and subsurface that preserves the physical processes, such as soil quality and the natural hydrology of a natural vegetation community, to be physical or biological features for this species.

Primary Constituent Elements for the Fickeisen Plains Cactus

Based on our current knowledge of the physical or biological features and habitat characteristics required to sustain the species' life-history processes, we determine that the primary constituent elements specific to the Fickeisen plains cactus are:

1. Soils derived from limestone that are found on mesas, plateaus, terraces, the toe of gently sloping hills with up to 20 percent slope, margins of canyon rims, and desert washes. These soils have the following features:

a. They occur on the Colorado Plateau in Coconino and Mohave Counties of northern Arizona and are within the appropriate series found in occupied areas;

b. They are derived from alluvium, colluvium, or eolian deposits of limestone from the Harrisburg Member of the Kaibab Formation and limestone, siltstone, and sandstone of the Toroweap and Moenkopi Formations;

c. They are nonsaline to slightly saline, gravelly, shallow to moderately deep, and well-drained with little signs of soil movement. Soil texture consists of gravelly loam, fine sandy loam, gravelly sandy loam, very gravelly sandy loam, clay loam, and cobbly loam.

2. Native vegetation within the Plains and Great Basin grassland and Great Basin desertscrub vegetation communities from 1,310 to 1,813 m (4,200 to 5,950 ft) in elevation that has a natural, generally intact surface and subsurface that preserves the bedrock substrate and are supportive of microbiotic soil crusts where they are naturally found.

3. Native vegetation that provides for habitat of identified pollinators within the effective pollinator distance of 1,000 m (3,280 ft) around each individual Fickeisen plains cactus.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features which are essential to the conservation of the species and which may require special management considerations or protection. All areas designated as critical habitat as described below may require some level of management to address the current and future threats to the physical or biological features essential to the conservation of the Fickeisen plains cactus. In all of the described units, special management may be required to ensure that the primary constituent elements for the cactus are conserved and the habitat provides for the biological needs of the cactus. Some of the management activities that could ameliorate these threats include, but are not limited to, those discussed below.

(1) Practice livestock grazing in a manner that maintains, improves, and expands the quantity and quality of desertscrub and grassland habitat. Special management considerations or protection may include the following: Manage livestock grazing sustainably with the natural landscape by determining appropriate areas, seasons, and use consistent within the carrying capacity of rangeland in response to current and future drought and warming trends; improve monitoring and documentation of grazing practices; manage cattle and feral hoofed mammals (ungulates) (*e.g.,* horses, burros) to reduce the risk of plants trampled and soil compaction; and manage for other small mammal species to restore desired processes to increase habitat quality and quantity.

(2) Manage for nonnative, invasive species, such as *Bromus tectorum* (cheatgrass), *Bromus rubens* (red brome), or *Erodium cicutarium* (redstem filaree), by minimizing conditions that may promote or encourage encroachment or establishment of nonnative, invasive species and restore or reestablish conditions that allow native plants to thrive. Within the range of the Fickeisen plains cactus, the establishment and success of nonnative, invasive species has been a result of historic land use and management practices such as logging, grazing, wildfire suppression actions, mining, and ORV use. Actions have been taken by land management agencies to reduce the spread of invasive species and reduce the risk of wildfire they pose from creating fine fuel loads. Nonnative, invasive species occur near Fickeisen plains cactus habitat and may pose a threat through competition for resources or increase the risk of fire. Special management considerations or protection may include the following: Prevent or restrict establishment of nonnative, invasive species; minimize ground-disturbing activities that may facilitate their spread; implement post-disturbance restoration activities such as native plant propagation; practice active removal of nonnative, invasive plant species and targeted herbicide application (provided herbicides can be shown not to negatively impact the Fickeisen plains cactus or the native pollinators); and improve monitoring and documentation on a site-by-site basis where nonnative, invasive species are present in occupied habitat to assess any effect (beneficial or negative) they pose of the cactus.

(3) Protect bedrock surfaces and associated limestone soils that provide suitable habitat from mineral development and associated infrastructure (new roads). Numerous breccia pipes (vertical, pipe-shaped bodies of highly fractured rock that collapsed into voids created by dissolution of underlying rock) are located across the Colorado Plateau and are expressed as circular collapse structures, minor folds, and other surface irregularities associated with the Kaibab and Toroweap Formations. Exploration and development of uranium has peaked and waned in accordance with market values. Areas of interest and oil and gas leasing/exploration overlap Fickeisen plains cactus habitat. These activities could result in direct habitat loss or alteration by removing or degrading limestone soils to such an extent that the soils would no longer support the growth of the Fickeisen plains cactus. Special management considerations or protection may include the following: Protect lands that support suitable habitat and site future development

such that the destruction or removal of limestone from the Kaibab, Toroweap, and Moenkopi formations is minimized and depositional areas are preserved.

(4) Manage or protect native desertscrub and plains grassland vegetation communities from recreational impacts. Special management considerations or protections may include the following: Managing trails, campsites, and ORVs; and reduce the likelihood of wildfires affecting the population and nearby plant community.

These management activities will protect the physical or biological features essential to the conservation of the Fickeisen plains cactus by reducing the direct and indirect effects of habitat loss, alteration, or fragmentation; preserving the bedrock surfaces and associated limestone soils that form the basis of its habitat; and maintaining the native vegetation communities and its pollinators.

In summary, the primary constituent elements of the Fickeisen plains cactus habitat may be impacted by livestock grazing; nonnative, invasive species; mineral development and associated transportation infrastructure; and recreation. We find that these activities may not be direct threats to the species as a whole, but may negatively impact the primary constituent elements. The areas designated as critical habitat within the geographical area occupied by the taxon at the time of listing contain the physical or biological features essential to the conservation of the Fickeisen plains cactus. Special management considerations or protection may be required to eliminate, or reduce to a negligible level, the threats affecting each unit or subunit and to preserve and maintain the essential features that the critical habitat units and subunits provide to the cactus.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. We review available information pertaining to the habitat requirements of the species. In accordance with the Act and its implementing regulation at 50 CFR 424.12(e), we consider whether designating additional areas—outside those currently occupied as well as those occupied at the time of listing—are necessary to ensure the conservation of the species. We have determined that all areas we are designating as critical habitat are within the geographical area occupied by the species at the time of listing (see the "Abundance and Trends" section in the final listing rule (78 FR 60608, October 1, 2013) for more information).

Based on the best available information, we conclude that the six critical habitat units are occupied by the Fickeisen plains cactus. We acknowledge that several of the populations have not been visited for more than 18 years, but we have determined they should be considered occupied at the time of listing. We are making this conclusion because the unvisited populations are within close proximity to other occupied areas within suitable habitat that includes monitored sites; they occur in areas with the same geology, elevation, and vegetation community as nearby known occupied sites; the environmental conditions at these sites have not been severe enough to result in loss of habitat, thereby causing possible extirpation of cactus from these areas or impeded establishment; information is insufficient to suggest that populations no longer are viable (lack of observations does not mean those populations have been extirpated); and the cactus has a lifespan of 10 to 15 years. The best available science indicates that there were once small populations of the cactus at these sites, and there is no evidence known to indicate otherwise. Please refer to the proposed listing and critical habitat rule (77 FR 60509, October 3, 2012) for more information on our rationale for including them within the final designation of critical habitat.

We considered areas outside the geographical area occupied by the Fickeisen plains cactus at the time of listing, but we are not designating any areas outside the geographical area occupied by the Fickeisen plains cactus. In our review, the Fickeisen plains cactus occurs across a broad range with different topography, large elevational gradients, and vegetation communities (AGFD 2011b, entire). Due to the vastness and diversity of the range, there are areas within its geographical range that provides for in-situ (on-site) conservation if needed in the future. Therefore, we determined that a subset of occupied lands within the species' current range is adequate to ensure the conservation of the Fickeisen plains cactus.

We reviewed available information and supporting data that pertains to the habitat requirements of the Fickeisen plains cactus. This information included research published in peer-reviewed articles, soil surveys, agency reports, special land assessments, and data collected from long-term monitoring plots, interviews with experts, and regional climate data and GIS coverage. Sources of information include, but are not limited to: AGFD 2011b, AZGS 2011, Billingsley *et al.* 2002, Billingsley and Dyer 2003, Billingsley *et al.* 2006, Billingsley *et al.* 2007, Billingsley and Priest 2010, BLM 2007a, Calico 2012, Goodwin 2011a, Hazelton 2012a, Milne 1987, NNHP 2011a, NRCS 2012, Phillips *et al.* 1982, Travis 1987, and Western Regional Climate Center 2012. Based on this information, we developed a strategy for determining which areas meet the definition of critical habitat for the Fickeisen plains cactus.

In identifying critical habitat units for the Fickeisen plains cactus, we proceeded through a multi-step process. We obtained all records for the distribution of the Fickeisen plains cactus from AGFD, as well as both published and unpublished documentation from our files. Recent survey results confirm that current plant distribution is similar to documented distribution records with the exception that additional populations have been found following survey efforts.

Our approach to delineating critical habitat units was applied in the following manner:

(1) We overlaid locations of the Fickeisen plains cactus into a GIS database. This provided us with the ability to examine slope, elevation, geologic type, vegetation community, and topographic features. These data points verified and slightly expanded the previously recorded elevation ranges for the Fickeisen plains cactus.

(2) In addition to the GIS layers listed above, we then included a 1,000-m (3,280-ft) pollination area around known individual Fickeisen plains cacti to encompass native vegetation surrounding individual Fickeisen plains cacti, as described in *Primary Constituent Elements for the Fickeisen Plains Cactus,* above.

(3) We then drew critical habitat boundaries that captured the locations elucidated under (1) and (2) above. Critical habitat designations were then mapped using Albers Equal Area (Albers) North American Datum 83 (NAD 83) coordinates.

Occupied Area at the Time of Listing

Areas where plants are or have been documented within the species' described range were considered to be occupied at the time of listing. The known range of the Fickeisen plains cactus is in Arizona from Mainstreet Valley and Hurricane Valley in Mohave County to House Rock Valley in Coconino County on the Arizona Strip; along the canyon rims of the Colorado

River and Little Colorado River to the area of Gray Mountain; and along the rims of Cataract Canyon on the Coconino Plateau.

Occupied occurrences or clusters of the Fickeisen plains cactus that were located in proximity to one another, but distributed within a large area, were grouped into one unit (*e.g.,* Hurricane Cliffs and House Rock Valley). Areas where individual plants are distributed over a large distance (*e.g.,* Cataract Ranch) were also categorized into one unit. All of the units contained all of the identified elements of physical or biological features and support multiple life-history processes.

The critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document in the rule portion. We include more detailed information on the boundaries of the critical habitat designation in the preamble of this document. We will make the coordinates or plot points or both on which each map is based available to the public on *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0025, on our Internet sites *http://www.fws.gov/southwest/es/arizona/,* and at the field office responsible for the designation (see **FOR FURTHER INFORMATION CONTACT** above).

Critical Habitat Designation for the Fickeisen Plains Cactus

We are designating six units as critical habitat for the Fickeisen plains cactus. The critical habitat areas we describe below constitute our current best assessment of areas that meet the definition of critical habitat for the Fickeisen plains cactus. The six units we are designating as critical habitat are: (1) Hurricane Cliffs; (2) Sunshine Ridge; (3) Clayhole Valley; (4) South Canyon; (5) House Rock Valley; and (6) Gray Mountain. All of the six critical habitat units were occupied by the Fickeisen plains cactus at the time of listing. The approximate area of each critical habitat unit is shown in Table 3.

TABLE 3—DESIGNATED CRITICAL HABITAT UNITS FOR THE FICKEISEN PLAINS CACTUS

Critical habitat unit	Federal		State		Private		Total	
	Ha	Ac	Ha	Ac	Ha	Ac	Ha	Ac
1. Hurricane Cliffs:								
1a. Dutchman Draw	1,525	3,769	0	0	2	5	1,527	3,774
1b. Salaratus Draw	445	1,098	266	658	13	33	724	1,789
1c. Temple Trail	443	1,096	0	0	0	0	443	1,096
1d. Toquer Tank	350	865	0	0	0	0	350	865
2. Sunshine Ridge	612	1,512	142	351	0	0	754	1,863
3. Clayhole Valley	338	836	76	188	0	0	414	1,024
4. South Canyon	110	272	0	0	0	0	110	272
5. House Rock Valley:								
5a. Beanhole Well	745	1,841	126	312	0	0	871	2,153
5b. North Canyon Wash	472	1,166	0	0	0	0	472	1,166
5c. Marble Canyon	214	528	0	0	0	0	214	528
5d. South Canyon	336	831	0	0	0	0	336	831
6. Gray Mountain:								
6a. Mays Wash	246	609	80	198	0	0	326	807
6b. Gray Mountain	0	0	7	17	514	1,271	521	1,288
Total	5,836	14,423	697	1,724	529	1,309	7,062	17,456

Note: Area sizes may not sum due to rounding.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the Fickeisen plains cactus, below.

Unit 1: Hurricane Cliffs

The Hurricane Cliffs Unit is located on the Arizona Strip in the north-central area of Mohave County, Arizona. The unit lies predominantly on the Shivwits Plateau and is bounded to the west by Mainstreet Valley and to the east by the Hurricane Cliffs. The unit consists of four subunits totaling 3,044 ha (7,524 ac) and includes small areas of private land, lands owned by the State of Arizona, and federally owned land managed by the BLM. The entire unit occurs within the area referred as the Arizona Strip that is managed by the BLM for multiple land use purposes such as livestock grazing, fuels management, energy, and recreation. The BLM manages grazing leases for large allotments comprised of a mix of their lands as well as State lands. Occupancy of the Hurricane Cliffs Unit by the Fickeisen plains cactus has been documented since 1986 (BLM 1986, p. 1). The taxon was considered generally rare, but in abundant numbers at Dutchman Draw with a few scattered individuals located in small clusters adjacent to Dutchman Draw populations. These smaller clusters include the Navajo, Ward, Salaratus Draw I, Salaratus Draw II, Temple Trail, and Toquer Tank populations. This entire unit helps to maintain the geographical range of the species and provide opportunity for population growth. This unit also provides a core population of the species.

Subunit 1a: Dutchman Draw—Subunit 1a consists of 1,527 ha (3,774 ac) of land near Dutchman Draw in Mainstreet Valley. The subunit occurs within the Shivwits Plateau and along an exposed fault. Lands within this subunit were occupied at the time of listing. A monitoring plot was established at this site in 1986. The BLM has visited the plot regularly since then. Monitoring information has shown fluctuations in plant numbers between years, but among all years, there is an overall decline in plant numbers from a peak of 219 individuals in 1992 to 5 individuals in 2012. This subunit also includes the Navajo and Ward cluster plots that were established to note presence or absence of the cactus. These small plots were last visited in 2001, and 10 plants were found at each of the plots.

This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus. Occupied habitat areas in this subunit occur predominantly within the Plains and Great Basin grassland with a small portion in the Great Basin desertscrub vegetation communities. Plants occur amongst tall, dense clumps of grama grass with some desert shrubs. The subunit is located at the foot of a gently sloping hill in fine alluvium deposits. Most of the bedrock surface is limestone, siltstone, and gypsum of the Kaibab Formation.

Subunit 1b: Salaratus Draw—Subunit 1b consists of 724 ha (1,789 ac) of land near Salaratus Draw. The subunit overlies an active fault on the Shivwits Plateau. Lands within this subunit were occupied at the time of listing and include Salaratus Draw I and Salaratus Draw II populations. This site was visited only three times between 1986 and 2001. At most, 44 plants were located in this subunit when last visited in 1994. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus.

Subunit 1c: Temple Trail—Subunit 1c consists of 443 ha (1,096 ac) of land in Lower Hurricane Valley. This subunit lies on the Hurricane Cliffs. It is bounded by the Shivwits Plateau to the west and the Uinkaret Plateau to the east, separated by an active fault that runs north along the Hurricane Cliffs. Lands within this subunit were occupied at the time of listing. This site was last visited in 2001 when seven individuals were found. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus.

Subunit 1d: Toquer Tank—Subunit 1d consists of 350 ha (865 ac) of land in Lower Hurricane Valley. Lands within this subunit were occupied at the time of listing. This site was regularly monitored from 1986 to 1991, when abundance counts ranged from 7 to 13 plants. This site was last visited in 1994, and seven individuals were found. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus.

The features essential to the conservation of the species within this unit are threatened by livestock grazing; nonnative, invasive species issues; small mammal predation on the cactus; and long-term drought coupled with increased minimum winter temperatures. Special management considerations or protection may be required to minimize habitat disturbance to Fickeisen plains cactus individuals, soil, and associated native vegetation; and to prevent or remove nonnative, invasive species within its habitat.

Unit 2: Sunshine Ridge

The Sunshine Ridge Unit is located on the Arizona Strip and lies on the Kanab Plateau in Mohave County, Arizona. The unit totals 754 ha (1,863 ac). This unit contains land that is federally and State owned. The entire unit is managed primarily by the BLM for multiple land use purposes such as livestock grazing, fuels management, energy, and recreation. Plants are located east of the Uinkaret Plateau and east of the range of the *Pediocactus sileri* (Siler pincushion cactus). Occupancy of the Sunshine Ridge Unit by the Fickeisen plains cactus has been documented since 1977 (AGFD 2011b, entire). This population has been regularly monitored since 1986, and has 34 plants as of 2011. Land within this unit was occupied at the time of listing and contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus. This unit helps to maintain the geographical range of the species and provide opportunity for population growth. This unit also provides a core population of the species.

The features essential to the conservation of the species within this unit are threatened by livestock grazing; nonnative, invasive species issues; small mammal predation on the cactus; and long-term drought coupled with increased minimum winter temperatures. Special management considerations or protection may be required to minimize habitat disturbance to Fickeisen plains cactus individuals, soil, and associated native vegetation; and to prevent or remove nonnative, invasive species within its habitat.

Unit 3: Clayhole Valley

The Clayhole Valley Unit is located in Upper Clayhole Valley on the Arizona Strip and lies within the Uinkaret Plateau in Mohave County, Arizona. The unit consists of 414 ha (1,024 ac) of land that is federally and State owned. The entire unit is managed primarily by the BLM for multiple land use purposes including livestock grazing. Occupancy of the Clayhole Valley Unit by the Fickeisen plains cactus has been documented since 1980 (AGFD 2011b, entire). The population has been monitored annually since 1986. As of 2011, the population contains 42 plants. Land within this unit was occupied at the time of listing and contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus. This unit helps to maintain the geographical range of the species and provide opportunity for population growth. This unit also provides a core population of the species.

The features essential to the conservation of the species within this unit are threatened by livestock grazing; nonnative, invasive species issues; small mammal predation on the cactus; and long-term drought coupled with increased minimum winter temperatures. Special management considerations or protection may be required to minimize habitat disturbance to Fickeisen plains cactus individuals, soil, and associated native vegetation; and to prevent or remove nonnative, invasive species within its habitat.

Unit 4: South Canyon

The South Canyon is located on the eastern boundary of the North Kaibab Ranger District of the Kaibab National Forest in Coconino County, Arizona. It is bounded by the Colorado River near Marble Canyon at House Rock Valley. It includes land originally designated as the Grand Canyon National Game Preserve that is now referred to as the Buffalo Ranch Management Area. It contains 110 ha (272 ac) of federally owned land that is administered by the Kaibab National Forest. This unit contains at least 62 individual Fickeisen plains cactus scattered among 6 areas along the rim of South Canyon Point. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus. This unit helps to maintain the geographical range of the species and provide opportunity for population growth. This unit also provides a core population of the species.

The primary land uses within this unit include big game hunting and recreational activities throughout the year. The area is very remote and may receive limited numbers of hikers, hunters, or campers. Under a memorandum of understanding, the Kaibab National Forest and the AGFD commit to managing the natural resources of this area, mainly big game species, to ensure that sensitive resources are not impacted and desired conditions are achieved (USFS 2012, p. 92). Livestock grazing by cattle and mining activities are not authorized within the Buffalo Ranch Management Area. Special management considerations or protection may be required within the unit to minimize habitat disturbance to the soil and associated native vegetation, and prevent invasion of nonnative plants.

The features essential to the conservation of the species within this unit are threatened by nonnative, invasive species issues and long-term drought coupled with increased minimum winter temperatures. Special management considerations or protection may be required to minimize conditions that may promote or encourage encroachment and establishment of nonnative, invasive species; and reduce the likelihood of wildfires affecting the population and nearby plant community.

Unit 5: House Rock Valley

The House Rock Valley is located on the eastern edge of the Arizona Strip near the North Rim of the Grand Canyon National Park in Coconino County, Arizona. The unit consists of four subunits totaling 1,893 ha (4,678 ac) of land. The unit consists of land that is federally and State owned. The entire unit is managed primarily by the BLM, mainly for livestock grazing. Lands within this unit were occupied at the time of listing and contain all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus. This entire unit helps to maintain the geographical range of the species and provide opportunity for population growth. This unit also provides a core population of the species.

Occupancy of the Fickeisen plains cactus in the House Rock Valley Unit was first documented in 1979 (Phillips 1979, entire; AGFD 2011b, entire), at Beanhole Well, Marble Canyon, and South Canyon. These sites have not been visited for more than 21 years. However, we have no reason to believe these sites were not occupied at the time of listing for reasons provided in the "Distribution and Range" section of the final listing rule (78 FR 60608). Occupancy at the North Canyon Wash site was documented in 1986, and it has been regularly monitored since. The House Rock Valley Unit is bounded by the Colorado River to the east, U.S. Highway 89A to the north, and the Kaibab National Forest to the west.

Subunit 5a: Beanhole Well—Subunit 5a consists of 745 ha (1,841 ac) of federally owned land that is managed by the BLM, and 126 ha (312 ac) of State-owned land. Lands within this subunit were occupied at the time of listing. Three plants were documented at Beanhole Well in 1979, and the site has been visited by Hughes since then, and while occupied habitat was observed, no plant numbers were reported to us (Calico 2012, pers. comm.). This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus.

Subunit 5b: North Canyon Wash—Subunit 5b consists of 472 ha (1,166 ac) of federally owned land that is managed by the BLM. Lands within this subunit were occupied at the time of listing. This site has been regularly monitored since 1986. As of 2011, the site contains 39 Fickeisen plains cacti. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus.

Subunit 5c: Marble Canyon—Subunit 5c consists of 214 ha (528 ac) of federally owned land that is managed by the BLM. Lands within this subunit were occupied at the time of listing. Eight plants were documented at Marble Canyon in 1979. This site has not been visited for many years. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus.

Subunit 5d: South Canyon—Subunit 5d consists of 336 ha (831 ac) of Federal land in House Rock Valley along the rim of Marble Canyon. Lands within this subunit were occupied at the time of listing. A total of 52 plants have been documented at this site historically. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus.

The features essential to the conservation of the species within this unit are threatened by livestock grazing; nonnative, invasive species issues; small mammal predation on the cactus; and long-term drought coupled with increased minimum winter temperatures. Special management considerations or protection may be required to minimize habitat disturbance to Fickeisen plains cactus individuals, soil, and associated native vegetation; and to prevent or remove nonnative, invasive species within its habitat.

Unit 6: Gray Mountain

The Gray Mountain Unit is located in the vicinity of the town of Gray Mountain, Arizona, on Highway 89 in Coconino County. The unit consists of two subunits totaling 847 ha (2,095 ac). The unit includes a checkerboard mix of private land, lands owned by the State, and federally owned land managed by the BLM. Lands within this unit are considered occupied at the time of listing. Occupancy at the Gray Mountain unit was first documented in 1962, and consists of two very small populations on both sides of Highway 89. Occupied sites were visited in 2013, and a few plants in flower were observed. This unit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus. This entire unit helps to maintain the geographical range of the species and provide opportunity for population growth. This unit also provides a core population of the species.

Subunit 6a: Mays Wash—Subunit 6a is located southeast of Highway 89 and consists of 326 ha (807 ac) of land. The subunit includes private land, land owned by the State, and federally owned land managed by the BLM. The entire subunit lies within a cattle ranch and is managed privately for livestock grazing. Lands in this subunit are considered occupied at the time of listing. Occupancy at this site was documented in 1981 and 1984, when 31 plants were found (AGFD 2011b, entire). A site visit to BLM land in 2013 located a few plants in flower. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus.

Subunit 6b: Gray Mountain—Subunit 6b is located west of Highway 89 and borders the boundary of the Navajo Nation. This subunit consists of 521 ha (1,288 ac) of land that is owned by the State and privately owned land. The entire subunit lies within a cattle ranch and is managed privately for livestock grazing. Lands in this subunit are considered occupied at the time of listing. Occupancy was documented in 2009 when three individuals were found (NNHP 2011a, p. 2). An individual in bloom was observed in 2013. This subunit contains all of the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus.

The features essential to the conservation of the species within this unit are threatened by livestock grazing by horses and sheep; nonnative, invasive species issues; mineral development and associated infrastructure; and long-term drought coupled with increased minimum winter temperatures. Special management considerations or protection may be required to minimize disturbance or destruction to the bedrock substrate and associated limestone soils; to prevent or remove nonnative, invasive species within its habitat; and protect the native vegetation communities.

Effects of Critical Habitat Designation for Acuña Cactus and Fickeisen Plains Cactus

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a new definition of destruction or adverse modification on February 11, 2016 (81 FR 7214) which becomes effective on March 14, 2016. Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of a species or that preclude or significantly delay development of such features.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded or authorized, do not require section 7 consultation.

As a result of section 7 consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define "reasonable and prudent alternatives" (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies sometimes may need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Application of the "Adverse Modification" Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species. Activities that may destroy or adversely modify critical habitat are those that result in a direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of the the acuña cactus or the Fickeisen plains cactus. Such alterations may include, but are not limited to, those that alter the physical or biological features essential to the conservation of these species or that preclude or significantly delay development of such features. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that may affect critical habitat, when carried out, funded, or authorized by a Federal agency, should result in consultation for the acuña cactus or the Fickeisen plains cactus. These activities include, but are not limited to, actions that would adversely affect the composition and structure of soil within the designated critical habitat for the acuña cactus or Fickeisen plains cactus through land disturbances that result in soil compaction or erosion, removal or degradation of native vegetation, or fragmentation of the acuña cactus or Fickeisen plains cactus populations or their pollinators.

Such activities within the designated critical habitat for the acuña cactus could include, but are not limited to:

(1) Actions within or near designated critical habitat areas that would result in the loss, disturbance, or compaction of soils. Such activities could include, but are not limited to: livestock grazing; U.S.–Mexican border activities; recreational or other ORV use; mining operations; fire management, including clearing of vegetation for fuel management; and road construction.

(2) Activities that would result in changes in the vegetation composition, such as a reduction in nurse plants or an introduction or proliferation of invasive, nonnative plant cover that may lead to unnatural fires or competition for nutrients, water, or space, resulting in decreased density or vigor of individual acuña cactus.

(3) Actions within or near designated critical habitat that would significantly

reduce pollination or seed set (reproduction). Such activities could include, but are not limited to: Use of pesticides; herbicides; mowing; fuels management projects such as prescribed burning; and post-wildfire rehabilitation activities using plant species that may compete with the acuña cactus.

(4) Actions within or near designated critical habitat areas that would result in the significant alteration of intact, native, Sonoran desertscrub vegetation communities within the range of the acuña cactus. Such activities could include: ORV activities and dispersed recreation; U.S.–Mexico border activities; new road construction or widening or existing road maintenance; new energy transmission lines or expansion of existing energy transmission lines; new border infrastructure; maintenance of any existing energy transmission line corridors or border infrastructure; fuels management projects such as prescribed burning; and rehabilitation or restoration activities using plant species that may compete with the acuña cactus.

These activities could result in the replacement or fragmentation of Sonoran desertscrub vegetation communities through the degradation or loss of native shrubs, grasses, and forbs in a manner that promotes increased wildfire frequency and intensity, and an increase in the cover of invasive, nonnative plant species that would compete for soil matrix components and moisture necessary to support the growth and reproduction of the acuña cactus.

For the Fickeisen plains cactus these activities could include, but are not limited to:

(1) Actions within or near designated critical habitat areas that would result in the loss, degradation, or compaction of soils along canyon rims, mesa tops or ridge tops, terraces, or other areas of suitable habitat (*e.g.,* near the base of gently sloping hills). Such activities could include, but are not limited to: Livestock grazing; recreational or other ORV use; fire management, including clearing of vegetation for fuel management; and road construction.

(2) Actions that would result in the loss of limestone substrate or limestone-derived soils. Such activities could include, but are not limited to mineral development; development for infrastructure (roads); or changes in land-use practices such as conversion of native grasslands or desertscrub communities to residential or commercial development.

(3) Activities that would result in changes in soil composition leading to changes in the vegetation composition, such as an introduction or proliferation of invasive, nonnative plant cover that may lead to competition for nutrients, water, or space, resulting in decreased density or vigor of individual Fickeisen plains cactus.

(4) Actions within or near designated critical habitat that would significantly reduce pollination or seed set (reproduction). Such activities could include, but are not limited to: use of pesticides; herbicides; mowing; fuels management projects such as prescribed burning; and post-wildfire rehabilitation activities using plant species that may compete with the Fickeisen plains cactus.

(5) Actions within or near designated critical habitat areas that would result in the significant alteration of intact, native, desertscrub and grassland habitat within the range of the Fickeisen plains cactus. Such activities could include: ORV activities and dispersed recreation; new road construction or widening or existing road maintenance; new energy transmission lines or expansion of existing energy transmission lines; maintenance of any existing energy transmission line corridors; fuels management projects such as prescribed burning; and rehabilitation or restoration activities using plant species that may compete with the Fickeisen plains cactus.

These activities could result in the replacement or fragmentation of desertscrub and grassland habitat through the degradation or loss of native shrubs, grasses, and forbs in a manner that promotes increased wildfire frequency and intensity, and an increase in the cover of invasive, nonnative plant species that would compete for soil matrix components and moisture necessary to support the growth and reproduction of the Fickeisen plains cactus.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an Integrated Natural Resources Management Plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

(1) An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;

(2) A statement of goals and priorities;

(3) A detailed description of management actions to be implemented to provide for these ecological needs; and

(4) A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation."

We consult with the military on the development and implementation of INRMPs for installations with listed species. We analyzed INRMPs developed by military installations located within the range of the critical habitat designation for the acuña cactus to determine if they meet the criteria for exemption from critical habitat under section 4(a)(3) of the Act. The following areas are Department of Defense lands with completed, Service-approved INRMPs within the proposed revised critical habitat designation.

Approved INRMP for the Acuña Cactus

Barry M. Goldwater Gunnery Range—Arizona

The BMGR has an approved INRMP and is committed to working closely with the Service to continually refine the existing INRMP as part of the Sikes Act's INRMP review process. Based on our review of the INRMP for this military installation, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that the portion of the acuña cactus habitat within this installation, identified as meeting the definition of critical habitat, is subject to the INRMP, and that conservation efforts identified in this INRMP will provide a benefit to the acuña cactus. Therefore, lands within this installation are exempt from critical habitat designation under section 4(a)(3)(B)(i) of the Act. We are not including 378 ha (935 ac) of habitat on BMGR in the critical habitat designation because of this exemption.

The BMGR completed a revision to the INRMP in relation to ongoing and planned conservation efforts for the acuña cactus and provided this revision to us during the public comment period. The benefits for acuña cactus from this revised INRMP include: avoiding disturbance of vegetation and pollinators within 900 m (2,953 ft) of known acuña cactus plants; developing and implementing procedures to control trespass livestock; monitoring illegal immigration, contraband trafficking, and border-related enforcement; and continuing to monitor and control invasive plant species to maintain quality habitat and prevent unnatural fire. Further, BMGR's environmental staff reviews projects and enforces existing regulations and orders that, through their implementation, projects avoid and minimize impacts to natural resources, including acuña cacti and their habitat. In addition, BMGR's INRMP provides protection to acuña cactus habitat by prohibiting both mining and agriculture on their lands. The BMGR INRMP specifies periodic monitoring of the distribution and abundance of acuña cacti populations on the range.

Based on the above considerations, and in accordance with section 4(a)(3)(B)(i) of the Act, we have determined that conservation efforts for the acuña cactus identified in the BMGR's INRMP provide a benefit to the acuña cactus and its habitat. Therefore, lands subject to the INRMP for BMGR, which includes the lands leased from the Department of Defense by other parties, are exempt from critical habitat designation under section 4(a)(3) of the Act, and we are not including approximately 378 ha (935 ac) of habitat in this critical habitat designation.

Consideration of Impacts Under section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if she determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless she determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

When identifying the benefits of inclusion for an area, we consider the additional regulatory benefits that area would receive due to the protection from destruction of adverse modification as a result of actions with a Federal nexus; the educational benefits of mapping essential habitat for recovery of the listed species; and any benefits that may result from a designation due to State or Federal laws that may apply to critical habitat.

When identifying the benefits of exclusion, we consider, among other things, whether exclusion of a specific area is likely to result in conservation; the continuation, strengthening, or encouragement of partnerships; or implementation of a management plan that provides equal to or more conservation than a critical habitat designation would provide.

In the case of both cactus species, the benefits of critical habitat include public awareness of the two cactus species' presence and the importance of habitat protection. Where a Federal nexus exists, the designations of critical habitat may also increase habitat protection for the two cactus species due to the protection from adverse modification or destruction of critical habitat.

In practice, a Federal nexus exists primarily on Federal lands or for projects undertaken by Federal agencies or permits issued by Federal agencies. Because the Service finalized the listing rules for these species on October 1, 2013, we have not been regularly consulting with Federal agencies on their effects to the cacti for projects on Federal lands, or for projects on privately owned lands that had a Federal nexus to trigger consultation under section 7 of the Act. We found one project that considered effects to the acuña cactus and eight projects that considered effects to the Fickeisen plains cactus over the past 20 years. In these cases, the Federal action agency requested our technical assistance in developing conservation recommendations aimed at minimizing or reducing effects to the species in order to preclude the need for listing and in furtherance of their authorities under section 7(a)(1) of the Act.

When we evaluate the existence of a conservation plan when considering the benefits of exclusion, we consider a variety of factors, including but not limited to, whether the plan is finalized; how it provides for the conservation of the essential physical or biological features; whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan will be implemented into the future; whether the conservation strategies in the plan are likely to be effective; and whether the plan contains a monitoring program or adaptive management to ensure that the conservation measures are effective and can be adapted in the future in response to new information.

After identifying the benefits of inclusion and the benefits of exclusion, we carefully weigh the two sides to evaluate whether the benefits of exclusion outweigh those of inclusion. If our analysis indicates that the benefits of exclusion outweigh the benefits of inclusion, we then determine whether exclusion would result in extinction of the species. If exclusion of an area from critical habitat will result in extinction, we will not exclude it from the designation.

Based on the information provided by entities seeking exclusion, as well as any additional public comments received, we considered whether certain lands in the proposed acuña cactus critical habitat Unit 3 and proposed Fickeisen plains cactus critical habitat Units 6, 7, 8, and 9 were appropriate for exclusion from this final designation pursuant to section 4(b)(2) of the Act. In particular, we considered whether the following were appropriate for exclusion: 156 ha (385 ac) of Tohono O'odham Nation land in Unit 3 of acuña cactus proposed critical habitat; 3,865 ha (9,554 ac) of Navajo Nation land in proposed Fickeisen plains cactus critical habitat Units 6, 7, and 8 (Subunit 8b); and 8,139 ha (20,113 ac) of Babbitt Ranch, LLC, lands in proposed Fickeisen plains cactus critical habitat Units 8 (Subunit 8a) and Unit 9, respectively, of the Fickeisen plains cactus proposed critical habitat. Table 4 below provides approximate areas (ac, ha) of lands that meet the definition of critical habitat but are being excluded under section 4(b)(2) of the Act from the final critical habitat rule. In the sections that follow, we present our discretionary exclusion analysis under section 4(b)(2) of the Act for those areas listed in Table 4.

TABLE 4—AREAS EXCLUDED FROM CRITICAL HABITAT DESIGNATION BY CRITICAL HABITAT UNIT

Proposed critical habitat unit	Specific area	Areas meeting the definition of critical habitat, in hectares (acres)	Areas excluded from critical habitat, in hectares (acres)
Acuña Cactus			
3—Sauceda Mountains Unit	Sauceda Mountains	1,637 (4,044)	156 (385)
Proposed critical habitat unit	Specific area	Areas proposed as critical habitat, in hectares (acres)	Areas excluded from critical habitat, in hectares (acres)
Fickeisen Plains Cactus			
6—Tiger Wash Unit	Tiger Wash 1 Subunit	380 (940)	380 (940)
	Tiger Wash 2 Subunit	1,497 (3,700)	1,497 (3,700)
	Shinumo Wash Subunit	380 (940)	380 (940)
7—Little Colorado River Overlook Unit	Little Colorado River Overlook	1,170 (2,891)	1,170 (2,891)
8—Gray Mountain Unit	Mays Wash Subunit	697 (1,724)	371 (917)
	Gray Mountain Subunit	960 (2,371)	438 (1,083)
9—Cataract Canyon Unit	Cataract Canyon	7, 768 (19,196)	7,768 (19,196)

Consideration of Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a DEA of the proposed critical habitat designation (which included areas we were considering for exclusion) and related factors (Industrial Economics 2012, entire). The draft analysis, dated February 22, 2013, was made available for public review from March 28, 2013, through April 29, 2013 (78 FR 18938). Following the close of the comment period, a final economic analysis (FEA, dated August 23, 2013) of the potential economic effects of the designation was developed taking into consideration the public comments and any new information (IEc 2013, entire).

The intent of the FEA is to quantify the economic impacts of all potential conservation efforts for the acuña cactus and the Fickeisen plains cactus; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both "with critical habitat" and "without critical habitat." The "without critical habitat" scenario represents the baseline for the analysis, considering protections already in place for the species (*e.g.*, under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The "with critical habitat" scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat. For a further description of the methodology of the analysis, see Chapter 2, "Framework for the Analysis," of the FEA.

The FEA also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. The FEA measures lost economic efficiency associated with residential and commercial development and public projects and activities, such as economic impacts on water management and transportation projects, Federal lands, small entities, and the energy industry. Decision-makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. The economic analysis provides estimated costs of the foreseeable potential economic impacts of the critical habitat designation for the two cacti over the next 20 years (2013 to 2032), which was determined to be the appropriate period for analysis. This is because limited planning information is available for most activities to forecast activity levels for projects beyond a 20-year timeframe.

The FEA quantifies economic impacts of the acuña cactus and Fickeisen plains cactus conservation efforts associated with the following categories of activity: (1) U.S.-Mexican border activities; (2) livestock grazing; (3) uranium mining; (4) commercial development; (5) recreational activities; (6) road construction and maintenance; and (7) species and habitat management. The total potential incremental economic impacts for all of the categories in areas proposed as acuña cactus critical habitat over the next 20 years is $34,000, an annualized impact of $2,200 (assuming a 7 percent discount rate). The total potential incremental economic impacts for the Fickeisen plains cactus are forecast to be $39,000, an annualized impact of $2,500, in areas proposed for critical habitat designation and $22,000, an annualized impact of $1,400, in areas considered for exclusion.

The Service considered the economic impacts of the critical habitat designation and the Secretary is not exercising her discretion to exclude any areas from this designation of critical habitat for the acuña cactus and Fickeisen plains cactus based on economic impacts.

A copy of the FEA with supporting documents may be obtained by contacting the Arizona Ecological Services Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov.*

Exclusions Based on National Security Impacts or Homeland Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands where a national security impact might exist. Department of Defense lands that are exempted from critical habitat designation for the acuña cactus in this final rule include the BMGR, as discussed above in *Application of Section 4(a)(3) of the Act*, above. Additionally, there are specific areas of acuña cactus habitat included in this final rule that are not owned or managed by the Department of Defense, but on which the U.S. Customs and Border Protection (CBP) operates along the U.S.–Mexico border. The U.S. Customs and Border Protection is tasked with maintaining national security interests along the nation's international borders. In order to achieve and maintain effective control of the United States border, CBP, through its component, the U.S. Border Patrol, requires continuing and regular access to certain portions of the area designated as critical habitat. Because CBP's border security mission has an important link to national security, CBP may identify impacts to national security that may result from designating critical habitat. We do not have information currently indicating that lands within the designation of critical habitat for the acuña cactus will have an impact on national security.

We also anticipate no impact on national security from the final designation of critical habitat for the Fickeisen plains cactus. Therefore, we did not propose an exclusion on this basis.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether there are permitted conservation plans covering the species in the area such as HCPs, safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

Private or Other Non-Federal Conservation Plans or Agreements and Partnerships, in General

We sometimes exclude specific areas from critical habitat designations based in part on the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships. A conservation plan or agreement describes actions that are designed to provide for the conservation needs of a species and its habitat, and may include actions to reduce or mitigate negative effects on the species caused by activities on or adjacent to the area covered by the plan. Conservation plans or agreements can be developed by private entities with no Service involvement, or in partnership with the Service.

We evaluate a variety of factors to determine how the benefits of any exclusion and the benefits of inclusion are affected by the existence of private or other non-Federal conservation plans or agreements and their attendant partnerships when we undertake a discretionary 4(b)(2) exclusion analysis. A non-exhaustive list of factors that we will consider for non-permitted plans or agreements is shown below. These factors are not required elements of plans or agreements, and all items may not apply to every plan or agreement.

(i) The degree to which the plan or agreement provides for the conservation of the species or the essential physical or biological features (if present) for the species;

(ii) Whether there is a reasonable expectation that the conservation management strategies and actions contained in a management plan or agreement will be implemented;

(iii) The demonstrated implementation and success of the chosen conservation measures;

(iv) The degree to which the record of the plan supports a conclusion that a critical habitat designation would impair the realization of benefits expected from the plan, agreement, or partnership;

(v) The extent of public participation in the development of the conservation plan;

(vi) The degree to which there has been agency review and required determinations (*e.g.*, State regulatory requirements), as necessary and appropriate;

(vii) Whether National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) compliance was required; and

(viii) Whether the plan or agreement contains a monitoring program and adaptive management to ensure that the conservation measures are effective and can be modified in the future in response to new information.

Babbitt Ranches, LLC, Partnership

We have determined that the private lands owned by the Babbitt Ranches, LLC, and State land with a land closure in place that is managed by the Babbitt Ranches, LLC, warrant exclusion from the final designation of critical habitat under section 4(b)(2) of the Act. We made this determination because the benefits of exclusion outweigh the benefits of including those lands in critical habitat based on our conservation partnership with the Babbitt Ranches, LLC, and their efforts to preserve the integrity of the cactus' habitat as evidenced by their management plan. The following represents our rationale for excluding certain lands owned or managed by the Babbitt Ranches, LLC, that are within the proposed Cataract Canyon Unit and Gray Mountain Unit from the final designated critical habitat for the Fickeisen plains cactus.

The Babbitt Ranches, LLC, is a family-owned business that has been in operation for over 120 years. It has dedicated itself to managing large landholdings in northern Arizona while raising cattle and American Quarter Horses in a sustainable manner. They own and operate three cattle ranches in northern Arizona—the Cataract, CO Bar, and Espee Ranches. The Cataract and CO Bar Ranch include areas occupied by the Fickeisen plains cactus and areas proposed as critical habitat (as described above). Besides cattle ranching, the Babbitt Ranches, LLC, support public recreational opportunities, wildlife conservation, and scientific research on the lands they own or manage.

We proposed to designate Fickeisen plains cactus critical habitat in the proposed Cataract Canyon Unit and Gray Mountain Unit, both of which are located on a mix of State trust land, Federal land, and private land owned by the Babbitt Ranches. The proposed Cataract Canyon Unit is located on the Cataract Ranch. It contains 7,768 ha (19,196 ac) of State trust and private land that is managed collectively as an active cattle ranch. The Gray Mountain Unit (Unit 6) contains two subunits that straddle both sides of Highway 89 and total 1,656 ha (4,095 ac), and the unit are within the CO Bar Ranch. These subunits are located by the town of Gray Mountain and are adjacent to the boundary of the Navajo Nation. The proposed Mays Wash Subunit 6a contains 697 ha (1,724 ac) and is a checkerboard of Federal, State trust, and private parcels within the CO Bar

Ranch. The proposed Gray Mountain Subunit 6b contains 960 ha (2,371 ac) of State trust and private parcels with a small number of acres owned by the Babbitt Ranches, LLC, and the remainder to another private landowner.

The Babbitt Ranches, LLC, has a strong record of land stewardship, and they have developed a strong partnership with the Service as a result. Their commitment to conserving species is supported by their cooperative efforts with other private organizations, State, and other Federal agencies to better understand and preserve natural resources. For example, the Babbitt Ranches, LLC, participated with AGFD in the release of federally endangered black-footed ferrets (*Mustela nigripes*) on their ranch. In support of the ferret release program, the Babbitt Ranches, LLC, also invited AGFD to annually map and monitor Gunnison's prairie dog (*Cynomes gunnissioni*) colonies. Another example of the Babbitt Ranches, LLC, commitment to conservation is their gift of a 24-acre parcel of land to Northern Arizona University for an ecological center to be used by faculty and students.

The Fickeisen plains cactus has been documented on all three of the cattle ranches where critical habitat was proposed. The second largest population of Fickeisen plains cactus in existence occurs on the Cataract Ranch, which supports 66 percent of the 466 individual Fickeisen plains cacti in the rangewide population. Individual cacti were first documented on Cataract Ranch in 2006. The population appeared to be healthy and viable by the different age classes observed, and the surrounding habitat showed little disturbance with the natural vegetative community intact. Thus, the status of this population further confirms that the holistic management of Cataract Ranch has been beneficial to the Fickeisen plains cactus.

On the State lands that are part of the Cataract Ranch, a land closure order was put in place in 1986. The order states: "The State land commissioner has determined that the best interests of the State trust would be served by closing the State land described in the caption of this Order to mineral claim location, new mineral prospecting permit applications, and new mineral lease applications." In 2011, a second closure order was enacted in which the State land commissioner determined that the best interests of the Trust would be served by closing "the State subsurface land to mineral claim location, new mineral exploration permits applications and new mineral lease applications."

The Babbitt Ranches, LLC, also submitted to the Service a Draft Fickeisen Plains Cactus Management Plan for Cataract Ranch and the Draft Espee Ranch Regional Conservation and Land Use Plan. Although the latter incorporates the Fickeisen Plains Cactus Management Plan into a broader, regional vision and focuses on conservation actions across all of the Babbitt Ranches, we focused our review on the commitments described for the Fickeisen plains cactus on Cataract Ranch because the majority of the proposed critical habitat occurs there. The Draft Fickeisen Plains Cactus Management Plan for Cataract Ranch commits to continuing to sustain healthy ecosystems, wildlife habitats, and biological diversity. As an active ranching operation, they have practiced this philosophy in the past, and will continue to adhere to their land ethics, which have preserved native grasslands and shrub-steppe habitats that incidentally benefit the Fickeisen plains cactus and its pollinators. They have a commitment to managing the ranches in an ecologically responsible fashion, which is evident in The Nature Conservancy's assessment of the land for a conservation easement, and by NRCS' rangeland inventory. Additional conservation measures for the Fickeisen plains cactus and its habitat within lands owned or managed by the Babbitt Ranches, LLC, include:

- A commitment to continuing surveys for the Fickeisen plains cactus on the three ranches and to working with the Service and others to develop Fickeisen plains cactus survey and monitoring protocols that can be employed rangewide.
- Utilizing the best grazing management practices to sustain rangeland health and Fickeisen plains cactus habitat over time through a rest rotation grazing system and by moving livestock among pastures based upon forage utilization and seasonal moisture. By this method, the timing, intensity, and frequency of grazing is controlled to allow forage and rangeland habitats to recover between grazing periods. Depending upon range conditions and the terms of grazing leases, maximum utilization of the forage production can range from roughly 35 to 50 percent. Babbitt Ranches, LLC, generally keeps their stocking rates below standard Animal Unit Months and grazing lease maximums. Although a written prescription is not followed for determining the number of cattle to keep on a pasture and length of time, livestock will continue to be managed to sustain productive forage and an intact ecosystem that integrates their commitment to conservation and healthy landscapes.
- Willingness to participate in any study or program related to collection, propagation, banking, and translocation of the Fickeisen plains cactus if such measures are considered feasible or desirable for survival and recovery of the taxon in response to climate change and extended droughts.
- Collecting information on small mammal predation during monitoring, and if it becomes an issue on lands owned or managed by the Babbitt Ranches, LLC, measures designed to exclude predators from Fickeisen plains cactus populations will be investigated.

Benefits of Inclusion—Babbitt Ranches, LLC

As discussed above under *Application of Section 4(b)(2) of the Act*, the primary effect of designating any particular area as critical habitat is the requirement for Federal agencies to consult with us under section 7 of the Act to ensure actions they carry out, authorize, or fund do not adversely modify designated critical habitat. Absent critical habitat designation in occupied areas, Federal agencies remain obligated under section 7 of the Act to consult with us on actions that may affect a federally listed species to ensure such actions do not jeopardize the species' continued existence. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. The regulatory standard is different, as the jeopardy analysis investigates the action's impact on the survival and recovery of the species, while the adverse modification analysis focuses on the action's effects on the designated habitat's contribution to conservation. This will, in many instances, lead to different results and different regulatory requirements. Thus, critical habitat designations may provide greater benefits to the recovery of the species than listing alone.

For some species (including Fickeisen plains cactus), and in some locations (in particular, those occupied by the taxon), the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species, and it is often difficult or impossible to differentiate between actions that avoid jeopardy to the species and actions needed solely to avoid destruction or adverse modification of critical habitat. Although all of the land excluded in this critical habitat designation is occupied by the taxon, the taxon occurs in low densities with individuals commonly spaced far apart. In some areas, impacts to critical habitat or, more specifically, the primary constituent elements will not result in direct impacts to the Fickeisen plains cactus. Therefore, the outcome of an adverse modification analysis in these areas would differ from the outcome of a jeopardy analysis.

Critical habitat may provide a regulatory benefit for the Fickeisen plains cactus when there is a Federal nexus present for a project that might adversely modify critical habitat. A Federal nexus generally exists where land is federally owned, or where actions proposed on non-Federal lands require a Federal permit or Federal funding. In the absence of a Federal nexus, the regulatory benefit provided through section 7 consultation under the Act does not exist. Any activities over which a Federal agency has discretionary involvement or control affecting designated critical habitat on Federal land would trigger a requirement to consult under section 7 of the Act. The Mays Wash subunit contains Federal land; the remainder of the proposed critical habitat in the proposed Cataract Canyon Unit and Gray Mountain Unit comprise State trust land and private land.

On the CO Bar Ranch, there are 87 ha (215 ac) of State trust land and 246 ha (609 ac) of BLM land that are split estate with BLM having subsurface mineral rights. These lands were included in the Gray Mountain Unit in the proposed critical habitat designation. On these lands, there is the potential for subsurface mineral operations, which would be outside of the management control of the Babbitt Ranches, LLC. Inclusion of these lands in a critical habitat designation would require the BLM to consult with the Service in order to ensure that the primary constituent elements are not adversely modified or destroyed. These regulatory benefits of inclusion are limited to areas with the potential to have a Federal nexus, and, thus, generally limited to these 87 ha (215 ac) of split estate State trust land and 246 ha (609 ac) of BLM land.

Although no Federal land exists within the proposed Cataract Canyon Unit, there is potential for a Federal nexus for activities proposed on the Cataract Ranch due to Federal funding. The Babbitt Ranches, LLC, have partnered with the NRCS in the past and may again in the future. Most Federal actions would be beneficial such as rangeland improvements, invasive plant eradication, and wildlife habitat enhancements. However, as a result of the establishment and implementation of protections associated with a 13,953-ha (34,480-ac) conservation easement referred to as the Coconino Plateau Natural Reserve Lands, it is unlikely that future Federal actions would impact the overall goal of the easement. The land was placed under the easement for the goal of protecting and preserving the historical and cultural aspects of the property as an active agricultural and livestock operation; and to preserve the conservation and open space values of the property by continuing to establish, define, and promote private land stewardship and a historical sense of obligation and responsibility for the land and its ecology. Because of protection of these lands, it is unlikely that future Federal actions would cause adverse modification of Fickeisen plains cactus critical habitat. If actions that could affect Fickeisen plains cacti and their habitat do occur, it is likely that the protections provided the taxon and its habitat under section 7(a)(2) of the Act would be largely redundant with the protections offered by the conservation easement.

Additionally, lands in the proposed Cataract Canyon Unit may have additional conservation value because the Babbitt Ranches, LLC, practice sustainable cattle ranching to maintain native vegetation communities and to improve and protect overall rangeland health. These efforts promote the conservation of suitable Fickeisen plains cactus habitat. The established purpose of the conservation easement is intended to protect the existing functional values of the native biotic communities, which sustain the cactus. Therefore, it is unlikely that Federal actions or actions conducted by the Babbitt Ranches, LLC, would result in depreciable diminishment or a long-term reduction of the capability of Fickeisen plains cactus habitat to recover. As a result, any rare Federal action that may result in formal consultation will likely result in only discretionary conservation recommendations (*i.e.*, adverse modification threshold is not likely to be reached). We believe there is an extremely low probability of mandatory elements (*i.e.*, reasonable and prudent alternatives) arising from formal section 7 consultations that include consideration of designated Fickeisen plains cactus critical habitat. As a result, the benefits of including these lands in the final critical habitat designation are reduced.

The designation of critical habitat for the Fickeisen plains cactus on Babbitt Ranches, LLC, would bring awareness of the cactus' presence to the State of Arizona during their review of mining leases, exploratory permits, or other land use activities under State control. Prior to any land-disturbing activity on State trust land by a project proponent, the Arizona State Land Department requires a pre-construction native plant survey. The required native plan survey would determine the compensation that must be paid to the Arizona State Land Department for the removal of specific cacti, including the Fickeisen plains cactus, which is currently considered a "highly safeguarded protected" plant. However, any action taken between the State and an application to protect or conserve the Fickeisen plains cactus or designated critical habitat from mineral activities would be at their discretion. Because it is unlikely that there would be a Federal nexus on State trust land unless a permit is required from a Federal agency or funding is appropriated, the educational benefits of including these lands in the final designation of critical habitat is minimized.

Another important benefit of including Babbitt Ranches, LLC, lands in a critical habitat designation is that the designation can serve to educate other landowners, agencies, neighboring tribes, and the public regarding the potential conservation value of an area, and may help focus conservation efforts on areas of high conservation value for certain species. Any information about the Fickeisen plains cactus, its endemism, and its rarity, that reaches a wide audience, including parties engaged in conservation activities, is valuable. However, the educational benefits of designating critical habitat for the Fickeisen plains cactus on the Babbitt Ranches, LLC, are small compared to those derived through conservation efforts currently being implemented.

Benefits of Exclusion—Babbitt Ranches, LLC

The benefits of excluding land owned by the Babbitt Ranches, LLC, from the designation of critical habitat for the Fickeisen plains cactus are substantial and include: (1) Continuance and strengthening of our effective working relationship with the Babbitt Ranches, LLC, NRCS, and the Arizona State Land Department to promote voluntary, proactive conservation of the Fickeisen plains cactus and its habitat as opposed to reactive regulation; (2) allowance for continued meaningful collaboration and cooperation in working toward species recovery, including conservation benefits that might not otherwise occur; and (3) encouragement of developing additional conservation easements and other conservation and management plans in the future for other federally listed and sensitive species.

Additionally, many landowners perceive critical habitat as an unfair and unnecessary regulatory burden. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999, p. 1,263; Bean 2002, p. 2). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and control of invasive species) are necessary for species conservation (Bean 2002, pp. 3–4). We believe the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone. The Service believes that, where consistent with the discretion provided by the Act, it is necessary to implement policies that provide positive incentives to private landowners to voluntarily conserve natural resources and that remove or reduce disincentives to conservation (Wilcove *et al.* 1996, pp. 1–15; Bean 2002, pp. 1–7).

We believe it is essential for the recovery of the Fickeisen plains cactus to build on continued conservation activities such as these with proven partners like the Babbitt Ranches, LLC. Exclusion of the entire Cataract Ranch (on the proposed Cataract Canyon Unit) will help preserve the partnership that we have established with the Babbitt Ranches, LLC, and with State agencies and local governments to foster future partnerships and encourage the establishment of future conservation and management of habitat for the Fickeisen plains cactus and other sensitive taxa. Furthermore, exclusion of the portions of the proposed Mays Wash subunit that are privately owned and managed by the Babbitt Ranches, LLC, will help preserve our partnership.

The Babbitt Ranches, LLC, have maintained an effective working relationship with many public and government entities including the Service for many years for the purpose of achieving their own values as agricultural landowners, which are described in the Constitution of Babbitt Ranches and evidenced by their management actions. The Babbitt Ranches, LLC, management plan and the conservation easement establishing the Coconino Plateau Natural Reserve Lands provides substantial protection and management for the Fickeisen plains cactus. Specifically, both the management plan and easement provide protection and management of the physical or biological features essential to the conservation of the taxon, and address conservation issues from a coordinated, integrated perspective. Therefore, the management plan and easement are expected to result in coordinated landscape-scale conservation that can contribute to genetic diversity by preserving the population, habitat, and native pollinators and their habitat that support recovery of the cactus and other endemic wildlife species.

In summary, we believe excluding State trust land (subject to land closure) managed by the Babbitt Ranches, LLC, and lands owned by the Babbitt Ranches, LLC, from the critical habitat designation will provide the significant benefit of maintaining our existing partnership and fostering new ones.

Benefits of Exclusion Outweigh the Benefits of Inclusion

We evaluated the exclusion of approximately 7,768 ha (19,196 ac) of private and State land within the boundaries of the proposed Cataract Canyon Unit from our proposed designation of critical habitat, and we determined the benefits of excluding all of these lands outweigh the benefits of including them as critical habitat for the Fickeisen plains cactus. We also evaluated the exclusion of approximately 1,656 ha (4,095 ac) of private, State, and Federal land managed by the Babbitt Ranches, LLC, within the boundaries of the proposed Gray Mountain Unit from our proposed designation of critical habitat. We have determined the benefits of excluding 371 ha (917 ac) of private land within the Mays Wash Subunit of the Gray Mountain Unit outweigh the benefits of including the area as critical habitat for the Fickeisen plains cactus.

The Babbitt Ranches have been and will continue to be managed to support sustainable cattle operations in response to variable annual climatic conditions and long-term shifts in global temperatures and precipitation, and in a manner that is consistent with the philosophy and land ethic of Babbitt Ranches, LLC, that is formalized in their constitution. Their holistic approach to managing their land use activities with the economic and social communities has contributed to the existence of a large, reproducing Fickeisen plains cactus population, which we recognized in the October 1, 2013, final listing rule (78 FR 60608).

The Service believes the additional regulatory and educational benefits of including these lands as critical habitat are relatively small, because of the unlikelihood of a Federal nexus on the private and State trust lands within the proposed critical habitat designation. These benefits are further reduced by the existence of a 13,953-ha (34,480-ac) conservation easement on the Cataract Ranch that contains 2,848 ha (7,037 ac) of proposed critical habitat. We anticipate that there will be little additional Federal regulatory benefit to the taxon on State trust land because there is a low likelihood that those parcels will be negatively affected to any significant degree by Federal activities requiring section 7 consultation, and ongoing management activities indicate there would be no additional requirements pursuant to a consultation that addresses critical habitat.

All areas that were proposed for critical habitat on the Babbitt Ranches, LLC, are occupied by the taxon. The educational benefits of including these lands are small. The designation of critical habitat can serve to educate the general public as well as conservation organizations regarding the potential conservation value of an area, but this goal is already being accomplished. Through the identification of deeded land as the Coconino Plateau Natural Reserve Lands and the Babbitt Ranches Land Steward Institute, an educational and research platform is already established for partners wishing to collaborate with the Babbitt Ranches on ecological research needs. Given the history of collaborating and partnering with Federal and State agencies, local governments, research institutions, and other partners to sustain native grasslands and wildlife conservation, the Service anticipates that the conservation strategies described in the Babbitt Ranches draft Fickeisen Plains Cactus Management Plan will be implemented in the future.

In summary, we find that excluding areas from critical habitat that are receiving both long-term conservation and management for the purpose of protecting the native grassland ecosystem, and thus the habitat that supports the Fickeisen plains cactus, will preserve our partnership with the Babbitt Ranches, LLC, and encourage future collaboration towards conservation and recovery of listed species. The partnership benefits are significant and outweigh the small potential regulatory, educational, and ancillary benefits of including the land in the final critical habitat for the Fickeisen plains cactus. Therefore, the conservation easement and the overall management of Babbitt Ranches, LLC, provides greater protection of habitat for the Fickeisen plains cactus than could be gained through the project-by-project analysis of a critical habitat designation.

Exclusion Will Not Result in Extinction of the Species—Babbitt Ranches, LLC

We determined that the exclusion of 7,768 ha (19,196 ac) of land within the boundaries of the proposed Cataract Canyon Unit and 371 ha (917 ac) of private land within Mays Wash Subunit of the Gray Mountain Unit for the Fickeisen plains cactus will not result in extinction of the taxon. Protections afforded the taxon and its habitat by the conservation easement and the history of land stewardship of Babbitt Ranches, LLC, as described in the Babbitt Ranches Draft Fickeisen Plains Cactus Management Plan, provide assurances that the taxon will not go extinct as a result of excluding these lands from the critical habitat designation. The jeopardy standard of section 7 of the Act will also provide protection in these occupied areas when there is a Federal nexus. Therefore, based on the above discussion, the Secretary is exercising her discretion to exclude 8,139 ha (20,113 ac) of land from the designation of critical habitat for Fickeisen plains cactus.

Tribal Lands

There are several Executive Orders, Secretarial Orders, and policies that relate to working with Tribes. These guidance documents generally confirm our trust responsibilities to Tribes, recognize that Tribes have sovereign authority to control Tribal lands, emphasize the importance of developing partnerships with Tribal governments, and directs the Service to consult with Tribes on a government-to-government basis.

A joint Secretarial Order that applies to both FWS and NMFS, Secretarial Order 3206, *American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act* (June 5, 1997) (S.O. 3206), is the most comprehensive of the various guidance documents related to Tribal relationships and Act implementation, and it provides the most detail directly relevant to the designation of critical habitat. In addition to the general direction discussed above, S.O. 3206 explicitly recognizes the right of Tribes to participate fully in the listing process, including designation of critical habitat. The Order also states: "Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species. In designating critical habitat, the Services shall evaluate and document the extent to which the conservation needs of the listed species can be achieved by limiting the designation to other lands." In light of this instruction, when we undertake a discretionary 4(b)(2) exclusion analysis, we will always consider exclusions of Tribal lands under section 4(b)(2) of the Act prior to finalizing a designation of critical habitat, and will give great weight to Tribal concerns in analyzing the benefits of exclusion.

However, S.O. 3206 does not preclude us from designating Tribal lands or waters as critical habitat, nor does it state that Tribal lands or waters cannot meet the Act's definition of "critical habitat." We are directed by the Act to identify areas that meet the definition of "critical habitat" (*i.e.*, areas occupied at the time of listing that contain the essential physical or biological features that may require special management or protection and unoccupied areas that are essential to the conservation of a species), without regard to landownership. While S.O. 3206 provides important direction, it expressly states that it does not modify the Secretaries' statutory authority.

Tohono O'odham Nation

We have worked with the Tohono O'odham Nation to consolidate information on their past, present, and future voluntary measures and management to conserve the acuña cactus and its habitat on their lands. We have determined, pursuant to section 4(b)(2) of the Act, that we will exclude approximately 156 ha (385 ac) of Tohono O'odham Nation land in Unit 3 from the final designation of critical habitat for the acuña cactus. As described in our discretionary exclusion analysis below, we have reached this determination because the benefits of excluding their lands from the final critical habitat designation outweigh the benefits of including their lands in the designation due to our ongoing and effective working partnership with the Tohono O'odham Nation.

The Tohono O'odham Nation is located in southern Arizona on lands in Pima, Pinal, and Maricopa Counties. The Tohono O'odham Nation encompasses 1,133,120 ha (2,800,000 ac) of land and is divided into 11 districts. The Tohono O'odham Nation's eastern boundary is located approximately 24 kilometers (km) (15 miles (mi)) west of the city of Tucson, and the administrative center is in the town of Sells, approximately 89 km (55 mi) southwest of Tucson. We continue to work with the Tohono O'odham Nation and the Bureau of Indian Affairs (BIA) on wildlife and plant-related projects including recovery efforts for Sonoran pronghorn (*Antilocapra americana sonoriensis*) and jaguar (*Panthera onca*) as well as surveys and monitoring for Pima pineapple cactus, jaguar, ocelot (*Leopardus pardalis*), lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*), and cactus ferruginous pygmy owls (*Glaucidium brasilianum cactorum*). We have established and maintain a cooperative working relationship with the Tohono O'odham Nation and the BIA when they request review of environmental assessments, seek technical advice, and conduct consultations for Tohono O'odham Nation projects. Surveys for any listed species are conducted by the BIA or Tohono O'odham Nation personnel prior to implementation of projects. In April of 2003, the Tohono O'odham Nation and the Service signed a Statement of Relationship that indicates the Tohono O'odham Nation, through its Natural Resources Department, will work in close collaboration with the Service to provide effective protections for listed species. In addition, the Service awarded a Tribal Wildlife Grant to the Tohono O'odham Nation in 2010 to conduct an inventory of the flora and fauna of the Baboquivari Mountains on Tribal lands. This information will be used to inform the management and conservation of wildlife and plant resources on Tribal lands in this area, including listed and sensitive species.

As a sovereign entity, the Tohono O'odham Nation seeks to continue to protect and manage their resources according to their traditional and cultural practices. The Tohono O'odham Nation requested that their land be excluded from the designation of critical habitat for the acuña cactus due to their sovereign status and their right to manage their own resources. They are concerned that critical habitat designation on their land would limit the Nation's right to self-determination and self-governance. The Tohono O'odham Nation recognizes that their land contains acuña cactus individuals and habitat, and they consider acuña cactus, like all cacti, to be culturally significant. Tohono O'odham Nation conservation measures to protect the acuña cactus include project review prior to ground-disturbing activity and surveys.

Benefits of Inclusion—Tohono O'odham Nation

Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and costs of critical habitat. The areas proposed as critical habitat that occur within the Tohono O'odham Nation are occupied by the acuña cactus and, therefore, if a Federal action or permitting occurs, there is a catalyst for evaluation under section 7 of the Act whether or not the area is designated as critical habitat.

Few regulatory benefits to the acuña cactus would be gained from a designation of critical habitat on the Tohono O'odham Nation lands, because the Nation already requires project review prior to any ground-disturbing activity due to the recognition of the cactus as a culturally significant plant and because the species is already listed. Because these conservation measures are already in place, it would be highly unlikely that any consultation would result in a determination of adverse modification. In addition, during coordination with the Tohono O'odham Nation, the Tribe indicated that they are not considering any project actions in the area where acuña cactus occur. Therefore, we also do not anticipate that Tribal actions would be likely to result in adverse impacts to acuña cactus requiring formal section 7 consultations. For these reasons, the regulatory benefit of a critical habitat designation on these lands is minimized.

There is the possible benefit that additional funding could be generated for habitat improvement in an area being designated as critical habitat. Tribes often seek additional sources of funding in order to conduct wildlife-related conservation activities. Therefore, having an area designated as critical habitat could improve the chances of receiving funding for acuña cactus habitat-related projects.

Another possible benefit of including lands in a critical habitat designation is that the designation can serve to educate the public regarding the potential conservation value of an area, and this may focus conservation efforts on areas of high conservation value for certain species. However, the Tohono O'odham Nation lands were included in the proposed designation of critical habitat; the proposal itself has reached a wide audience and has, thus, provided information to the broader public, as well as the BIA and the Tribe, about the conservation value of this area. Since publication of the proposed critical habitat designation, the Tribe has conducted a survey to locate acuña cactus within areas proposed as critical habitat. Therefore, additional educational benefits of an acuña cactus critical habitat designation on Tohono O'odham Nation lands are minimized.

Benefits of Exclusion—Tohono O'odham Nation

The proposed critical habitat designation includes approximately 156 ha (385 ac) of Sonoran desert-scrub habitat with the Tohono O'odham Nation boundaries. Benefits of excluding these Tribal lands from designated critical habitat include the continuance and strengthening of our ongoing and effective working relationship with Tohono O'odham Nation to promote the conservation of listed species, including the acuña cactus and its habitat. We recognize and endorse the resource management activities of the Nation with regard to listed species and have been informed of the development of a draft land management plan for the Tohono O'odham Nation, which will include conservation measures for the acuña cactus. We have established a working relationship with Tohono O'odham Nation through informal and formal meetings that offered information sharing, technical advice, assistance, and recommended conservation measures for acuña cactus and its habitat. We find that conservation benefits (*e.g.*, acuña cactus surveys and project review) are being provided to the acuña cactus and its habitat through our cooperative working relationship with the Tohono O'odham Nation.

We assign great weight to the benefits of excluding Tribal lands, which would honor our cooperative partnership with the Tribe. During our discussions with the Tohono O'odham Nation and through a letter received during our first public comment period, we were informed that the designation of critical habitat on Tribal land would be viewed as an intrusion on their sovereign ability to manage natural resources in accordance with their own policies, customs, and laws. To this end, we found that the Tohono O'odham Nation would prefer to work with us on a government-to-government basis. For these reasons, we believe that our working relationship with the Tohono O'odham Nation would be better maintained and more effective if they are excluded from the designation of critical habitat for the acuña cactus. The benefits of excluding this area from critical habitat will encourage the continued cooperation and development of data-sharing and management plans for this and other listed species. If this area is designated as critical habitat, we believe it is unlikely that sharing of information related to the acuña cactus would occur.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Tohono O'odham Nation

The benefits of including the Tohono O'odham Nation in critical habitat are small and are limited to educational and regulatory benefits. However, as discussed above, these educational benefits are minimized because they have been provided for already through including lands on the Nation in the proposed critical habitat designation. Similarly, the regulatory benefits are minimized because all areas proposed as critical habitat within the Tohono O'odham Nation are occupied and, thus, already subject to section 7 of the Act regardless of a critical habitat designation. Therefore, it is highly unlikely that any consultation would result in a determination of adverse modification. Alternatively, the benefits of excluding these areas from critical habitat for the acuña cactus are more significant and include encouraging the continued partnership with the Tribe as well as development and implementation of special management measures such as project review prior to ground-disturbing activity and surveys. These activities will allow the Tohono O'odham Nation to manage their natural resources to benefit the acuña cactus without the perception of Federal government intrusion that would occur if we designated critical habitat on their land. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of this area will likely also provide additional benefits to the species that would not otherwise be available to encourage and maintain cooperative working relationships. Therefore, we find that the benefits of excluding Tohono O'odham Nation lands from critical habitat designation outweigh the benefits of including this area.

Exclusion Will Not Result in Extinction of the Species—Tohono O'odham Nation

As noted above, the Secretary, under section 4(b)(2) of the Act, may exclude areas from the critical habitat designation unless it is determined, "based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned." We have determined that exclusion of the Tohono O'odham Nation from the critical habitat designation will not result in the extinction of the acuña cactus. The Tohono O'odham Nation has committed to protecting and managing the acuña cactus and is in the process of creating a natural resources management plan, which will include the acuña cactus as well as all listed plant and animal species found on their lands. In summary, the Tohono O'odham Nation has committed to conservation measures for the acuña cactus on their land that are at least equal to the conservation value that would be available through the designation of critical habitat. With the implementation of these conservation measures and ongoing coordination with the Tribe with regard to conservation of the acuña cactus, the exclusion of Tohono O'odham Nation land from proposed critical habitat will not result in extinction of the species. Accordingly, we have determined that the Tohono O'odham Nation should be excluded from acuña cactus critical habitat designation under section 4(b)(2) of the Act, because the benefits of exclusion outweigh the benefits of inclusion and will not cause the extinction of the species.

Navajo Nation

We have determined, pursuant to section 4(b)(2) of the Act, that we will exclude approximately 3,865 ha (9,554 ac) of Navajo Nation land in proposed Fickeisen plains cactus critical habitat Units 6 (Tiger Wash Unit), 7 (Little Colorado River Overlook Unit), and Subunit 8b (Gray Mountain Subunit) from the final designation of critical habitat for the Fickeisen plains cactus. We are excluding the entire Unit 6 and 7, along with all portions of Subunit 8b on Navajo Nation lands. As described in our discretionary exclusion analysis below, we have reached this determination because the benefits of excluding their lands from the final critical habitat designation outweigh the benefits of including their lands in the designation due to our ongoing and effective working relationship with the Navajo Nation.

The Navajo Nation recognizes the Fickeisen plains cactus as a species in need of protection and special management on lands they administer (RCF–014–91) (Navajo Nation 2013, p. 5). Their management plan would serve as a tool for conserving the cactus and its habitat on the Navajo Nation. The Navajo Nation Department of Fish and Wildlife (NNDFW) will review their management plan for effectiveness and make revisions according to the current status of the cactus under Navajo and Federal law. Reviews will be conducted every 5 years or when new, significant information about threats or management becomes available for the Fickeisen plains cactus.

The Navajo Nation Code, at 17 NNC section 507, recognizes the importance of endangered species, establishes a penalty for the disturbance of these species, and charges the Director, NNDFW, with the responsibility to recommend to the Resources Committee of the Navajo Nation Council updates to the Navajo Endangered Species List (NESL). The first record of the Fickeisen plains cactus on the Navajo Nation is from 1956 (Navajo Nation 2013, p.10). The Navajo Nation listed the Fickeisen plains cactus as a Group 3 endangered species on the NESL in 1991 (RCF–014–91). A Group 3 species is a species or subspecies whose prospects of survival or recruitment are likely to be in jeopardy in the foreseeable future. The cactus was included on the NESL due to its limited geographic range, specificity of habitat requirements, low recruitment rate and decline in numbers, and threats from livestock grazing, ORV use, potential for recreational development within its habit, and illegal collection. There are 15 known occurrences of the Fickeisen plains cactus on the Navajo Nation with an estimated total population of 506 individuals.

The NNDFW has management authority for fish, wildlife, and native plants with regard to endangered and threatened species protection; and all temporary and permanent developments must receive clearance from the NNDFW. The NNDFW reviews a project's potential impact on protected wildlife or their habitat by using their Natural Heritage Database and various Tribal and Federal wildlife protection regulations, and recommends approval, disapproval, or conditional approval to the Resources and Development Committee. As a species included on the NESL, the Fickeisen plains cactus is protected from disturbance, and conservation of the cactus and its habitat will be facilitated primarily through the Navajo Nation's existing policies for managing and conserving natural resources.

In 2003, the Resources Committee of the Navajo Nation Council, by Resolution No. RCMA–34–03, approved the Biological Resources Land Use Clearance Policies and Procedures, also known as the Navajo Nation Resource Conservation Plan (RCP). The RCP is a tool used by the Navajo Nation, local chapters, and developers to guide environmentally responsible development and to protect resources of high conservation value, including habitats of listed species. The RCP is based on comprehensive rare and threatened species data held in a NNDFW NNHP database and identifies and defines habitats and landscapes on the Navajo Nation based on their conservation value. The RCP divides the Navajo Nation into six land status categories based on their biological sensitivity and uses these categories to manage actions in a way that minimizes impacts to sensitive species and habitats. The Fickeisen plains cactus is located in areas designated as Area 5 (biological preserves), Area 2 (medium sensitivity) and Area 3 (low sensitivity). Documentation of impacts that a proposed project may have on biological resources is required for each of these areas. The NNDFW provides technical assistance to the Nation, chapters, and developers in following the RCP, and assesses adherence to the RCP during project review for making recommendations to the Resources and Development Committee.

Area 5 lands (biological preserves) are landscapes of high wildlife value and little or no current development or disturbance, or are particularly important for one or more protected species. Permanent or temporary development within biological preserves is prohibited unless it is compatible with the management of those areas as wildlife habitat. For development in biological preserves, the standard process for planning and approval of development, as described in the RCP, must be implemented. The NNDFW is committed to ensuring that any development that occurs in biological preserves is consistent with ecotourism principles.

The proposed Tiger Wash Unit, proposed Little Colorado River Overlook Unit, and portions of the proposed Gray Mountain Subunit occur on the Navajo Nation. These 3 proposed critical habitat units, including 9 of the 15 Fickeisen plains cactus populations on the Navajo Nation, are located within 2 biological preserves. These biological preserves are the Little Colorado River and Marble Canyon Preserves (Navajo Nation 2013, p. 17). The RCP thus creates an avenue for the NNDFW to recommend conservation measures to avoid or minimize impacts to plants and its habitat. Proposed development projects must demonstrate that impacts to protected species will be minimal, and the NNDFW strongly urges relocating projects to less sensitive habitats if possible.

Although NNDFW makes a strong effort to avoid impacts to habitats of sensitive species through project evaluation, some necessary developments may occur and efforts will be made to reduce, minimize, or mitigate potential project impacts. When a project could disturb Fickeisen plains cactus habitat, NNDFW requires the project sponsor to adhere to protocol surveys and avoidance restrictions. Projects with the potential to disturb or affect its habitat require a 61-m (200-ft) avoidance buffer from known plants. The size of the buffer is more or less dependent on the scope and scale of the proposed project.

The NNDFW recognizes the impact nonnative, invasive species have on the native vegetation community and to other listed species they manage on their land. They are uncertain whether exotic annual species negatively impact the Fickeisen plains cactus and its habitat. The Navajo Nation will monitor the presence of exotic annual species within occupied habitat and document any effects exotics may pose, including effects from a potential fire caused by overabundance of these species. The NNHP staff will incorporate a plant community survey into their monitoring efforts to record if there is a relationship between weed abundance and the status of the cactus population. If studies establish a causal relationship between abundance of exotics and declines in the Fickeisen plains cactus, they will implement conservation measures to control weed abundance. Proposed research with the Navajo Nation and other partners would examine potential effects of invasive species on the germination and establishment of the *Pediocactus bradyi* (Brady pincushion cactus). The results of the study, if conducted, could be applicable to the Fickeisen plains cactus since both *Pediocactus* species share similar habitats and have similar life-history traits. The Navajo Nation is working with the BIA and other partners to develop an Integrated Weed Management Plan for the Navajo Nation.

While livestock grazing is a traditional way of life for the Navajo people, the Navajo Nation recognizes that management is needed to address impacts that grazing has on the entire ecosystem, which supports habitat the Fickeisen plains cactus relies upon for survival. Efforts are under way by Navajo policy makers and agencies to address past grazing impacts on the Navajo Nation and to improve grazing enforcement and protection of Navajo resources and ecosystems. For example, this year the Navajo Departments of Resource Enforcement and Agriculture, in the Division of Natural Resources, partnering with local chapters (municipal subdivisions of the Navajo government), have been conducting roundups to reduce overgrazing by stray, feral, and unpermitted livestock. Additionally, the Navajo Nation and BIA have been conducting public outreach regarding grazing impacts and the necessity of immediate and proactive steps to be taken to reduce grazing pressure and restore productivity of Navajo Nation rangelands.

Benefits of Inclusion—Navajo Nation

As discussed above under *Application of Section 4(b)(2) of the Act,* Federal agencies, in consultation with the Service, must ensure that their actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of any designated critical habitat of such species. The difference in the outcomes of the jeopardy analysis and the adverse modification analysis represents the regulatory benefit and cost of critical habitat designation.

One important benefit of including lands in a critical habitat designation is that the designation can serve to educate the public regarding the potential conservation value of an area, and it may help focus management efforts on areas of high value for certain species. Any information about the Fickeisen plains cactus that reaches a wide audience, including parties engaged in conservation activities, is valuable. The Navajo Nation is currently working with the Service to address Fickeisen plains cactus habitat and conservation, participate in research on the taxon to further our knowledge and recovery objectives, and exchange management information. Because the Navajo Nation has developed a Fickeisen Plains Cactus Management Plan, has been involved with the critical habitat designation process, and is aware of the value of their lands for conservation of the plant, the educational benefits of a Fickeisen plains cactus critical habitat designation on the Navajo Nation are minimized.

There is the possible benefit that additional funding could be generated for habitat improvement in an area being designated as critical habitat. Tribes often seek additional sources of funding in order to conduct wildlife-related conservation activities. Therefore, having an area designated as critical habitat could improve the chances of receiving funding for Fickeisen plains cactus habitat-related projects.

Therefore, because of the implementation of their tribal management plan, rare initiation of formal section 7 consultations for listed plants and other listed species, and overall coordination with the Navajo Nation on the Fickeisen plains cactus, it is anticipated that there may be some, but limited, benefits from including tribal land in a Fickeisen plains cactus critical habitat designation. The principal benefit of any designated critical habitat is that activities in and affecting such habitat require consultation under section 7 of the Act. Such consultation would ensure that adequate protection is provided to avoid destruction or adverse modification of critical habitat. However, with the Navajo Nation implementing the RCP, which acts already to conserve Fickeisen plains cactus habitat combined with the rarity of Federal actions resulting in formal section 7 consultations, the benefits of a critical habitat designation are minimized.

Benefits of Exclusion—Navajo Nation

The proposed critical habitat designation includes approximately 3,865 ha (9,554 ac) of habitat within the Navajo Nation boundaries. Benefits of excluding these Tribal lands from designated critical habitat include the continuance and strengthening of our ongoing and effective working relationship with Navajo Nation to promote the conservation of listed species, including the Fickeisen plains cactus and its habitat. We recognize and endorse the resource management activities of the Tribe with regard to listed species and have collaborated with the Tribe in the development of a Fickeisen plains cactus management plan. We have established a working relationship with the Navajo Nation through informal and formal meetings that offered information sharing, technical advice, assistance, and recommended conservation measures for the Fickeisen plains cactus and its habitat. We find that conservation benefits are being provided to the Fickeisen plains cactus and its habitat through our cooperative working relationship with the Navajo Nation.

As evidence of this partnership, during the development of the Fickeisen plains cactus critical habitat proposal, we met informally and communicated with staff of the NNDFW and NNHP to discuss how the Navajo Nation might be affected by the regulations associated with Fickeisen plains cactus management, recovery, and the designation of critical habitat. As such, we established a relationship specific to Fickeisen plains cactus listing. As part of our relationship, we provided technical assistance to them in their development of a Fickeisen plains cactus management plan, which documented measures they have been implementing for the conservation of this species and its habitat on their lands. This plan is in our supporting record for this decision. Consistent with long-standing tribal sovereignty concepts and past consultations with tribes, the Navajo Nation expressed that they have an inherent right to sovereignty and self-determination over their own lands and natural resources. Additionally, their lands are connected to their cultural and religious beliefs, and as a result they have a strong commitment and reverence toward its stewardship and conservation. They recognize that promoting healthy ecosystems and protecting the Fickeisen plains cactus and its habitat are common goals they share with the Service.

As described above, the Navajo Nation has a project-by-project review process in place that allows evaluation and implementation of conservation measures to minimize, or eliminate adverse impacts to the Fickeisen plains cactus and its habitat. The NNHP conduct surveys for the Fickeisen plains cactus and maintains a database on the quality of its habitat throughout Navajo Nation lands that includes the status and occurrence of the cactus. Having this information available creates effective conservation through any project review process. The implementation of their RCP has been coordinated and approved through appropriate Tribal processes. Overall, the commitment toward management of the Fickeisen plains cactus habitat likely accomplishes greater conservation than would be available through the implementation of a designation of critical habitat on a project-by-project basis.

We have an established and effective working relationship with the Navajo Nation spanning several decades. This relationship has resulted in the implementation or facilitation of actions and plans that have benefited the conservation of numerous candidate and listed species on the Navajo Nation, including preparation of a recovery plan and status reviews for the Service, section 6 funding for inventory and monitoring, conservation projects, cooperative enforcement efforts, ongoing sharing of information, permitting Service personnel to conduct recovery activates on the Navajo Nation, and cooperation in section 7 consultations.

We assign great weight to the benefits of excluding Navajo Nation lands, which would honor our cooperative partnership with this Tribe. The Navajo Nation submitted comments in the second comment period stating that in weighing critical habitat exclusions the Service should consider the working relationship we have with tribes and the potential damage to the relationship if the Service intrudes on the sovereign authority of Tribal natural resource programs and Tribal plans for managing species. Furthermore, the Navajo Nation stated that Tribal trust lands are not public lands and are not subjected to the same Federal regulations or cultural context as those on public lands. Therefore, designation of critical habitat on their land may undermine internal efforts by the Navajo Nation to address impacts to the Fickeisen plains cactus through comprehensive reform (NNDFW 2012, pp. 4–5).

Evidence of this partnership is the Fickeisen Plains Cactus Management Plan, and the Navajo Nation has developed management plans to include conservation efforts for other listed species and their habitats. We believe that the Navajo Nation is willing to continue working cooperatively with us and others to benefit other listed species, but only if they view the relationship as mutually beneficial. Consequently, the development of future voluntary management actions for other listed species may be compromised if the Navajo Tribal lands are designated as critical habitat for the Fickeisen plains cactus. Thus, we place great weight on the benefits of excluding these lands due to this partnership in light of the future conservation efforts that would benefit Fickeisen plains cactus and other listed species.

Benefits of Exclusion Outweigh the Benefits of Inclusion—Navajo Nation

The benefits of including the Navajo Nation in the critical habitat designation are the incremental benefits gained through the regulatory requirement to consult under section 7 and consideration of the need to avoid adverse modification of critical habitat, agency and educational awareness, potential additional grant funding, and the implementation of other laws and regulations. However, as discussed in detail above, we believe these benefits are minimized because they are provided for through other mechanisms, such as: (1) The advancement of our Federal Indian Trust obligations; (2) the conservation benefits to the Fickeisen plains cactus and its habitat from implementation of the Navajo Nation Fickeisen plains cactus management plan; and (3) the maintenance of effective collaboration and cooperation to promote the conservation of the cactus and its habitat.

If there is a Federal nexus for a project on the Navajo Nation, the action agency would be required to consult under section 7 of the Act to ensure the actions they fund, authorize, or carry out would not jeopardize the continued existence of the listed species. For critical habitat, projects undergoing section 7 consultation would need to evaluate effects to the primary constituent elements within the critical habitat unit, but there is no prohibition for take for plants, only recommended conservation measures. This consultation requirement appears to be comparable to requirements the Navajo Nation already has for project review, development of biological evaluations, and mitigation or avoidance to minimize negative effects to NESL-listed species, including plants. Navajo Nation policies offer additional or stricter protection over those defined in the Act such as a penalty for take of listed plants and a general avoidance distance of 61 m (200 ft).

Not all projects occurring on the Navajo Nation would have a Federal nexus. For those projects proposed by the Tribe or a non-Federal entity, for which section 7 would not apply, Tribal policies would be in effect. Overlaying the requirements for section 7 of the Act on top of the requirements in the RCP would not provide additional benefits to conserve the Fickeisen plains cactus. Therefore, the regulatory and conservation benefits of a critical habitat designation on these lands are minimized.

The benefits of excluding these areas from critical habitat designation are more significant and include recognition and fostering of the partnership with the Navajo Nation, which is evidenced by the continued implementation of Tribal management and conservation measures such as monitoring, survey, habitat management and protection, and development of in-situ (on-site) conservation activities that are planned for future recovery of the taxon. Through these measures the Navajo Nation will continue to manage their natural resources to benefit habitat along canyon rims of the Colorado and Little Colorado Rivers for the Fickeisen plains cactus, without the perception of Federal Government intrusion. This philosophy is also consistent with our published policies on Native American natural resource management. The exclusion of these areas will likely also provide additional benefits to the Fickeisen plains cactus that would not otherwise be available without the Service's maintaining a cooperative working relationship with the Tribe. In conclusion, we find that the benefits of excluding Tribal land on the Navajo Nation in Arizona from critical habitat designation for the Fickeisen plains cactus outweigh the benefits of including those areas.

Exclusion Will Not Result in Extinction of the Species—Navajo Nation

As noted above, the Secretary, under section 4(b)(2) of the Act, may exclude areas from the critical habitat designation unless it is determined, "based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned." We have determined that exclusion of the Navajo Nation from the critical habitat designation will not result in the extinction of the Fickeisen plains cactus. Federal activities on these areas that may affect the Fickeisen plains cactus will still require consultation under section 7 of the Act. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species.

Therefore, even without critical habitat designation on the Navajo Nation lands, activities that occur on these lands cannot jeopardize the continued existence of the Fickeisen plains cactus. Even so, our record demonstrates that formal section 7 consultations rarely occur on tribal lands, which is likely a result of existing conservation planning. Second, the Navajo Nation has committed to protecting and managing its habitat according to their management plan and natural resource management objectives. We believe this commitment, in conjunction with listing of the plant on the NESL, accomplishes greater conservation than would be available through the designation of critical habitat. With the implementation of their RCP and their protection of the Fickeisen plains cactus, we have concluded that this exclusion from critical habitat will not result in the extinction of the cactus. Accordingly, we have determined that the Navajo Nation should be excluded under subsection 4(b)(2) of the Act, because the benefits of excluding these lands from critical habitat for the Fickeisen plains cactus outweigh the benefits of inclusion, and the exclusion of these lands from the designation will not result in the extinction of the taxon.

Required Determinations

Regulatory Planning and Review—Executive Orders 12866 and 13563

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866, while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself, and therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried by the Agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7 only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated by this designation. There is no requirement under RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if promulgated, the final critical habitat designation will not have a significant economic impact on a substantial number of small entities.

Energy Supply, Distribution, or Use—Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. The Office of Management and Budget indicates that this statement is required only when a rulemaking is both significant under E.O. 12866 and exceeds one or more of the nine threshold levels outlined in their guidance on implementation of E.O.

13211. The critical habitat designation for Fickeisen plains cactus is not a significant rulemaking under E.O. 12866. Critical habitat designation for the Fickeisen plains cactus is anticipated to affect uranium mining. Impacts to uranium mining, however, are limited to the administrative costs of one formal consultation for the EZ Mine, totaling less than $900 in costs for the managing company, Energy Fuels Inc., over the 20-year period of analysis. The magnitude of these consultation costs is not anticipated to reduce fuel production or energy production, or increase the cost of energy production or distribution in the United States in excess of one percent. Thus, none of the nine threshold levels outlined by the Office of Management and Budget's guidance for implementing this Executive Order is exceeded. Therefore, we do not expect the designation of this final critical habitat to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector, and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and Tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding," and the State, local, or Tribal governments "lack authority" to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule would significantly or uniquely affect small governments. The lands being designated for critical habitat are predominantly owned by the BLM, Bureau of Reclamation, U.S. Military, USFS, National Park Service, State of Arizona, and Tohono O'odham and Navajo Nations. None of these government entities fit the definition of "small governmental jurisdiction." Therefore, a Small Government Agency Plan is not required.

Takings—Executive Order 12630

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for the acuña cactus and Fickeisen plains cactus in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that this designation of critical habitat for the acuña cactus and Fickeisen plains cactus does not pose significant takings implications for lands within or affected by the designation.

Federalism—Executive Order 13132

In accordance with Executive Order 13132 (Federalism), this final rule does not have significant Federalism effects. A Federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Arizona. The designation of critical habitat in areas currently occupied by the acuña cactus or the Fickeisen plains cactus may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical or biological features essential to the conservation of the species are more clearly defined, and the elements of the features of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultations to occur).

Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

Civil Justice Reform—Executive Order 12988

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the elements of physical or biological features essential to the conservation of the acuña cactus and Fickeisen plains cactus within the designated areas to assist the public in understanding the habitat needs of the species.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on state or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes.

We included some Tohono O'odham Nation lands in Pima County, Arizona, in the proposed designation of acuña cactus critical habitat and Navajo Nation lands in Coconino County, Arizona, in the proposed designation of Fickeisen plains cactus critical habitat. Less than one percent of all known acuña cacti occur on Tohono O'odham Nation lands; 15 percent of all known Fickeisen plains cactus occur on Navajo Nation lands. Using the criteria found in the *Criteria Used To Identify Critical Habitat* section, we determined that all of the areas proposed for designation on tribal lands were essential to the conservation of the acuña cactus and Fickeisen plains cactus. We sought government-to-government consultation with the Tohono O'odham and the Navajo Nations throughout the proposal and development of this final designation of acuña cactus and Fickeisen plains cactus critical habitat, and we spoke to tribal representatives at meetings about the designation. We communicated with tribes through letters, electronic messages, and telephone calls about our exclusion process under section 4(b)(2) of the Act, and we provided information to develop management plans, technical assistance and review of management plans, and critical habitat designation information and schedule updates. We considered these tribal areas for exclusion from final critical habitat designation to the extent consistent with the requirements of section 4(b)(2) of the Act, and subsequently, excluded all tribal lands from this final designation.

References Cited

A complete list of references cited in this final rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Arizona Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this package are the staff members of the Arizona Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we hereby amend amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245; unless otherwise noted.

■ 2. Amend § 17.12(h), the List of Endangered and Threatened Plants, by revising the entries for "*Echinomastus erectocentrus* var. *acunensis*" and "*Pediocactus peeblesianus* var. *fickeiseniae*" under FLOWERING PLANTS, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
Flowering Plants				
*	*	* *	*	* *
Echinomastus erectocentrus var. *acunensis*.	Acuña cactus	Wherever found	E	78 FR 60607; 10/1/2013 50 CFR 17.96(a)^{CH}
*	*	* *	*	* *
Pediocactus peeblesianus var. *fickeiseniae*.	Fickeisen plains cactus	Wherever found	E	78 FR 60607; 10/1/2013 50 CFR 17.96(a)^{CH}
*	*	* *	*	* *

■ 3. Amend § 17.96(a) by adding entries for "*Echinomastus erectocentrus* var. *acunensis* (acuña cactus)" and "*Pediocactus peeblesianus* var. *fickeiseniae* (Fickeisen plains cactus)," in alphabetical order under the family Cactaceae, to read as follows:

§ 17.96 Critical habitat—plants.

(a) *Flowering plants.*

* * * * *

Family Cactaceae: *Echinomastus erectocentrus* var. *acunensis* (acuña cactus)

(1) Critical habitat units are depicted for Maricopa, Pima, and Pinal Counties, Arizona, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the acuña cactus consist of:

(i) Native vegetation within the Paloverde-Cacti-Mixed-Scrub Series of the Arizona Upland Subdivision of the Sonoran Desert-scrub at elevations between 365 to 1,150 m (1,198 to 3,773 ft). This vegetation must contain predominantly native plant species that:

(A) Provide protection to the acuña cactus (Examples of such plants are creosote bush, ironwood, and palo verde.);

(B) Provide for pollinator habitat with a radius of 900 m (2,953 ft) around each individual reproducing acuña cactus;

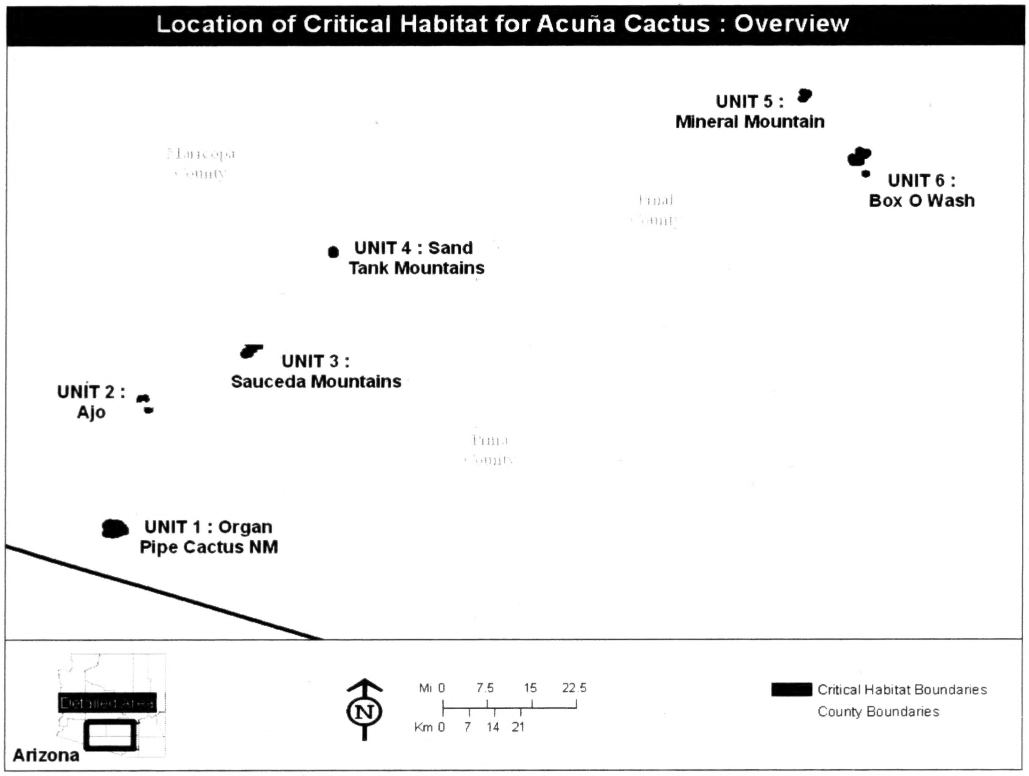
(C) Allow for seed dispersal through the presence of bare soils immediately adjacent to and within 10 m (33 ft) of individual acuña cactus.

(ii) Soils overlying rhyolite, andesite, tuff, granite, granodiorite, diorite, or Cornelia quartz monzonite bedrock that are in valley bottoms, on small knolls, or on ridgetops, and are generally on slopes of less than 30 percent.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on September 19, 2016.

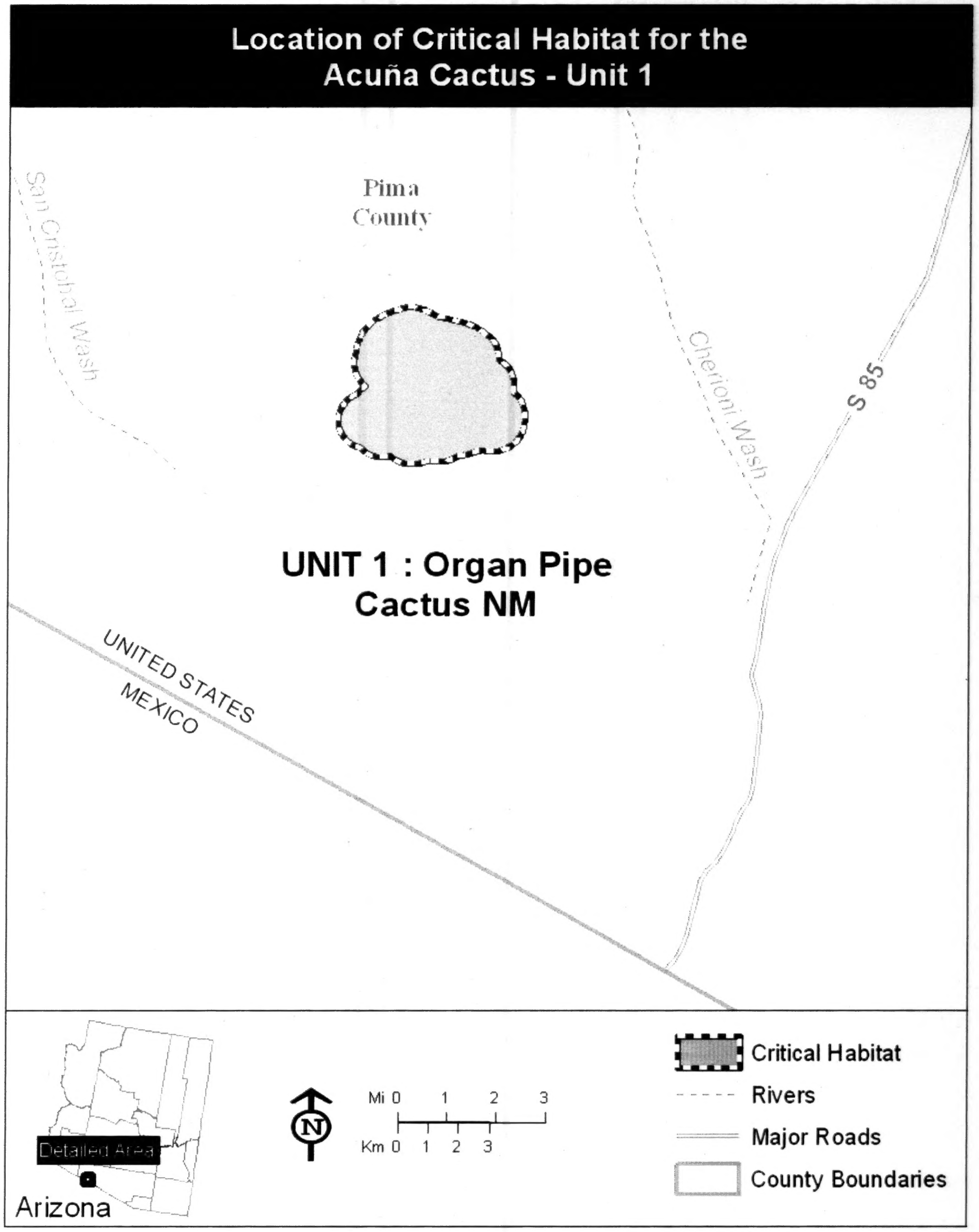
(4) *Critical habitat map units.* Digital data layers defining map units were created using geology, topography, elevation, vegetation community, mean annual precipitation from the 1971 to 2000 period of record, and acuña cactus herbarium and site visit records from 1952 to the present; these were mapped using Universal Transverse Mercator coordinates. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at the Service's internet site (*http://www.fws.gov/southwest/es/arizona/*), *http://www.regulations.gov* at Docket No. FWS–R2–ES–2013–0025, and at the field office responsible for this designation. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(5) Index map follows:


Location of Critical Habitat for Acuña Cactus : Overview
UNIT 5 : Mineral Mountain
UNIT 6 : Box O Wash
Maricopa County
Pinal County
UNIT 4 : Sand Tank Mountains
UNIT 3 : Sauceda Mountains
UNIT 2 : Ajo
Pima County
UNIT 1 : Organ Pipe Cactus NM
Detailed Area
Arizona
N
Mi 0 7.5 15 22.5
Km 0 7 14 21
Critical Habitat Boundaries
County Boundaries

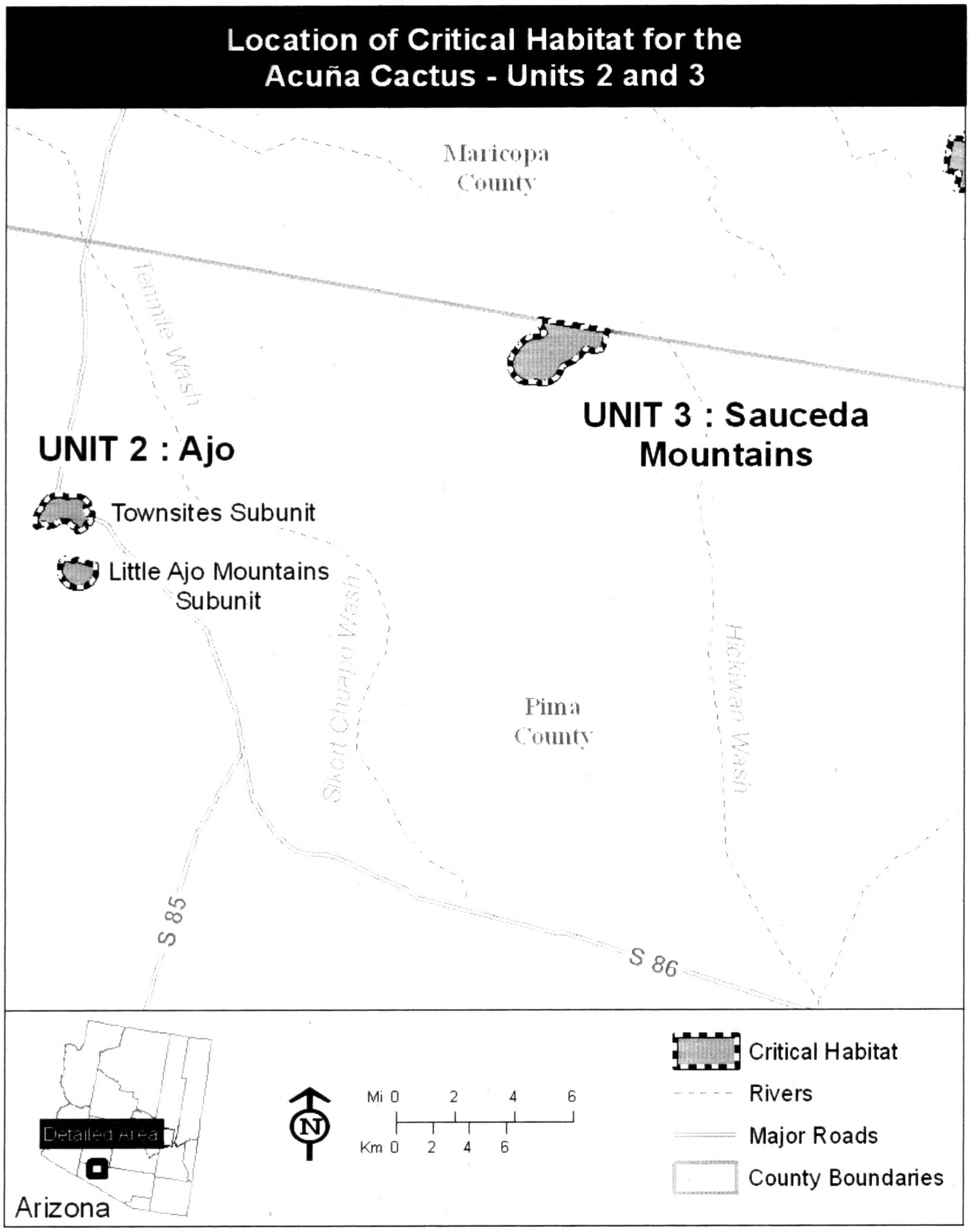
BILLING CODE 4333–15–P

(6) Unit 1: Organ Pipe Cactus National Monument, Pima County, AZ. Map of Unit 1 follows:


Location of Critical Habitat for the Acuña Cactus - Unit 1
Pima County
San Cristobal Wash
Cherioni Wash
S 85
UNIT 1 : Organ Pipe Cactus NM
UNITED STATES
MEXICO
Detailed Area
Arizona
N
Mi 0 1 2 3
Km 0 1 2 3
Critical Habitat
Rivers
Major Roads
County Boundaries

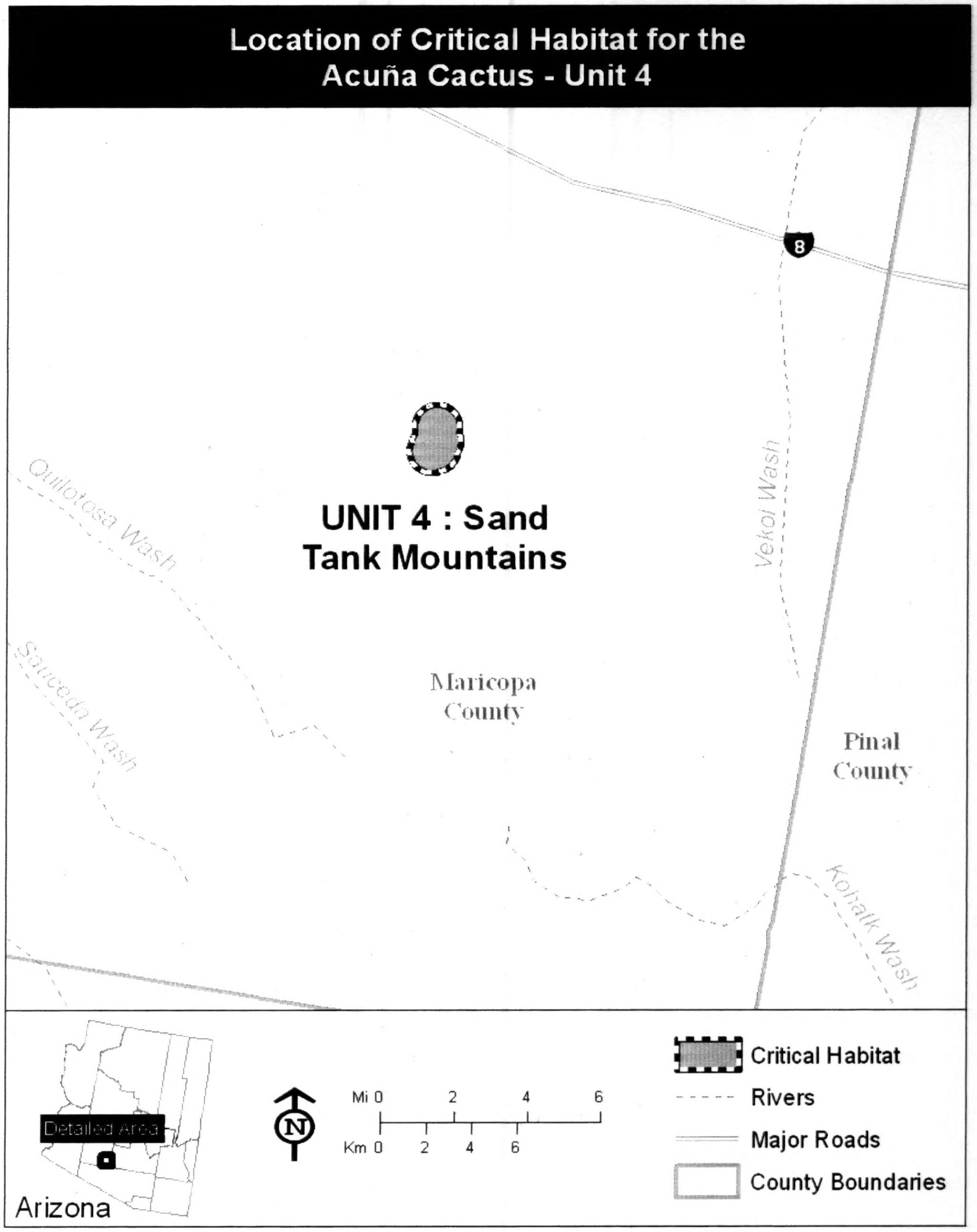
(7) Unit 2: Ajo Unit, Pima County, AZ.

Map of Unit 2 follows:

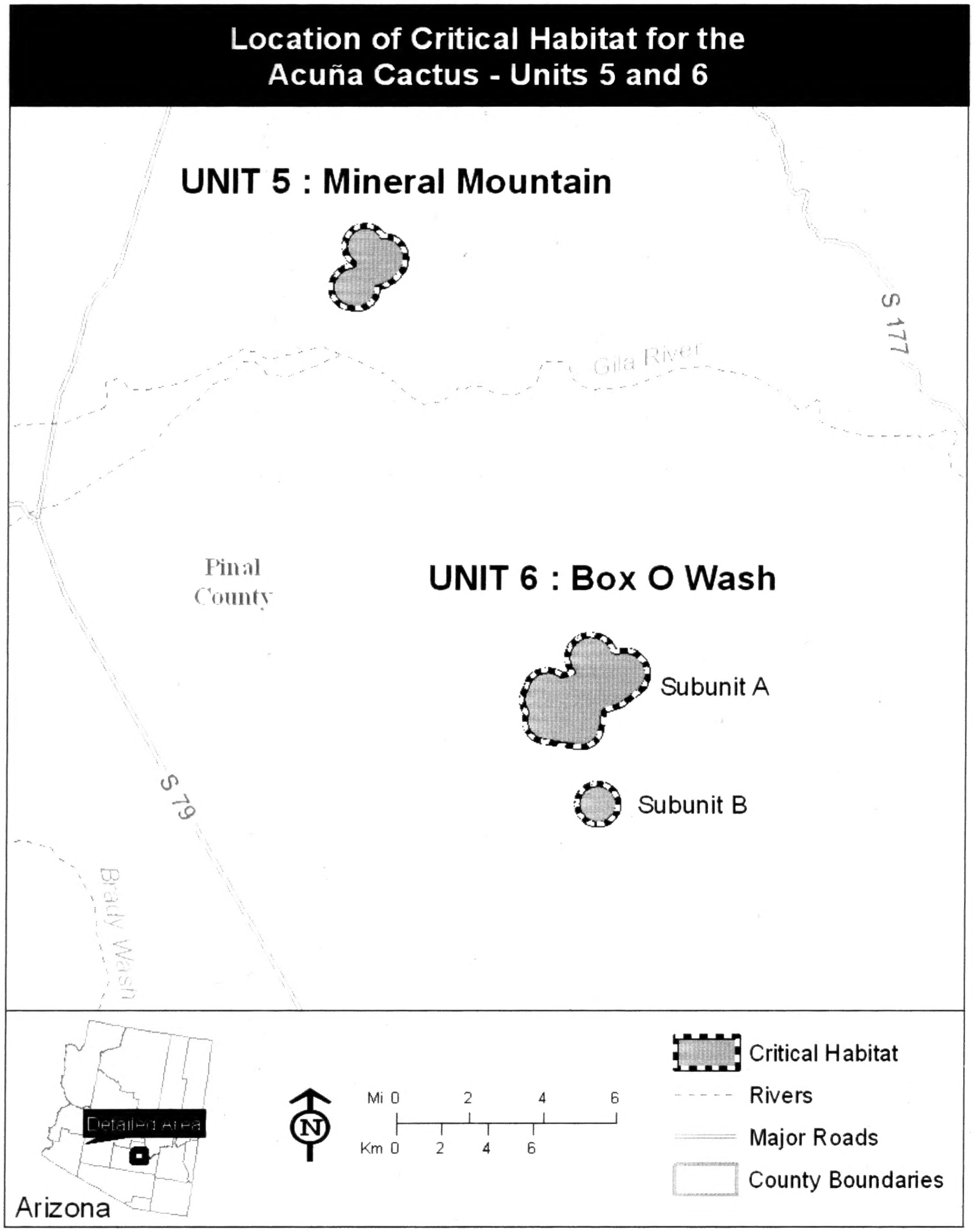

Location of Critical Habitat for the Acuña Cactus - Units 2 and 3
Maricopa County
Tenmile Wash
UNIT 3 : Sauceda Mountains
UNIT 2 : Ajo
Townsites Subunit
Little Ajo Mountains Subunit
Skeleton Chuapo Wash
Pima County
Hickiwan Wash
S 85
S 86
Detailed Area
Arizona
N
Mi 0 2 4 6
Km 0 2 4 6
Critical Habitat
Rivers
Major Roads
County Boundaries

(8) Unit 3: Sauceda Mountains Unit, Maricopa and Pima Counties, AZ. Map of Unit 3 is provided at paragraph (7) of this entry.

(9) Unit 4: Sand Tank Mountains Unit, Maricopa County, AZ. Map of Unit 4 follows:


Location of Critical Habitat for the
Acuña Cactus - Unit 4
8
UNIT 4 : Sand
Tank Mountains
Quilotosa Wash
Sauceda Wash
Vekol Wash
Kohatk Wash
Maricopa
County
Pinal
County
Detailed Area
Arizona
N
Mi 0 2 4 6
Km 0 2 4 6
Critical Habitat
Rivers
Major Roads
County Boundaries

(10) Unit 5: Mineral Mountain Unit, Pinal County, AZ. Map of Units 5 and 6 follows:


Location of Critical Habitat for the Acuña Cactus - Units 5 and 6
UNIT 5 : Mineral Mountain
UNIT 6 : Box O Wash
Subunit A
Subunit B
Pinal County
Gila River
Brady Wash
S 177
S 79
Detailed Area
Arizona
Mi 0 2 4 6
Km 0 2 4 6
N
Critical Habitat
Rivers
Major Roads
County Boundaries

(11) Unit 6: Box O Wash Unit, Pinal County, AZ. Map of Unit 6 is provided at paragraph (10) of this entry.

* * * * *

Family Cactaceae: *Pediocactus peeblesianus* var. *fickeiseniae* (Fickeisen plains cactus)

(1) Critical habitat units are depicted for Mohave and Coconino Counties, Arizona, on the maps below.

(2) Within these areas, the primary constituent elements of the physical or biological features essential to the conservation of the Fickeisen plains cactus consist of:

(i) Soils derived from limestone that are found on mesas, plateaus, terraces, the toe of gentle sloping hills with up to 20 percent slope, margins of canyon rims, and desert washes. These soils have the following features:

(A) They occur on the Colorado Plateau in Coconino and Mohave Counties of northern Arizona and are within the appropriate series found in occupied areas;

(B) They are derived from alluvium, colluvium, or eolian deposits of limestone from the Harrisburg member of the Kaibab Formation and limestone, siltstone, and sandstone of the Toroweap and Moenkopi Formations;

(C) They are nonsaline to slightly saline, gravelly, shallow to moderately deep, and well-drained with little signs of soil movement. Soil texture consists of gravelly loam, fine sandy loam, gravelly sandy loam, very gravelly sandy loam, clay loam, and cobbly loam.

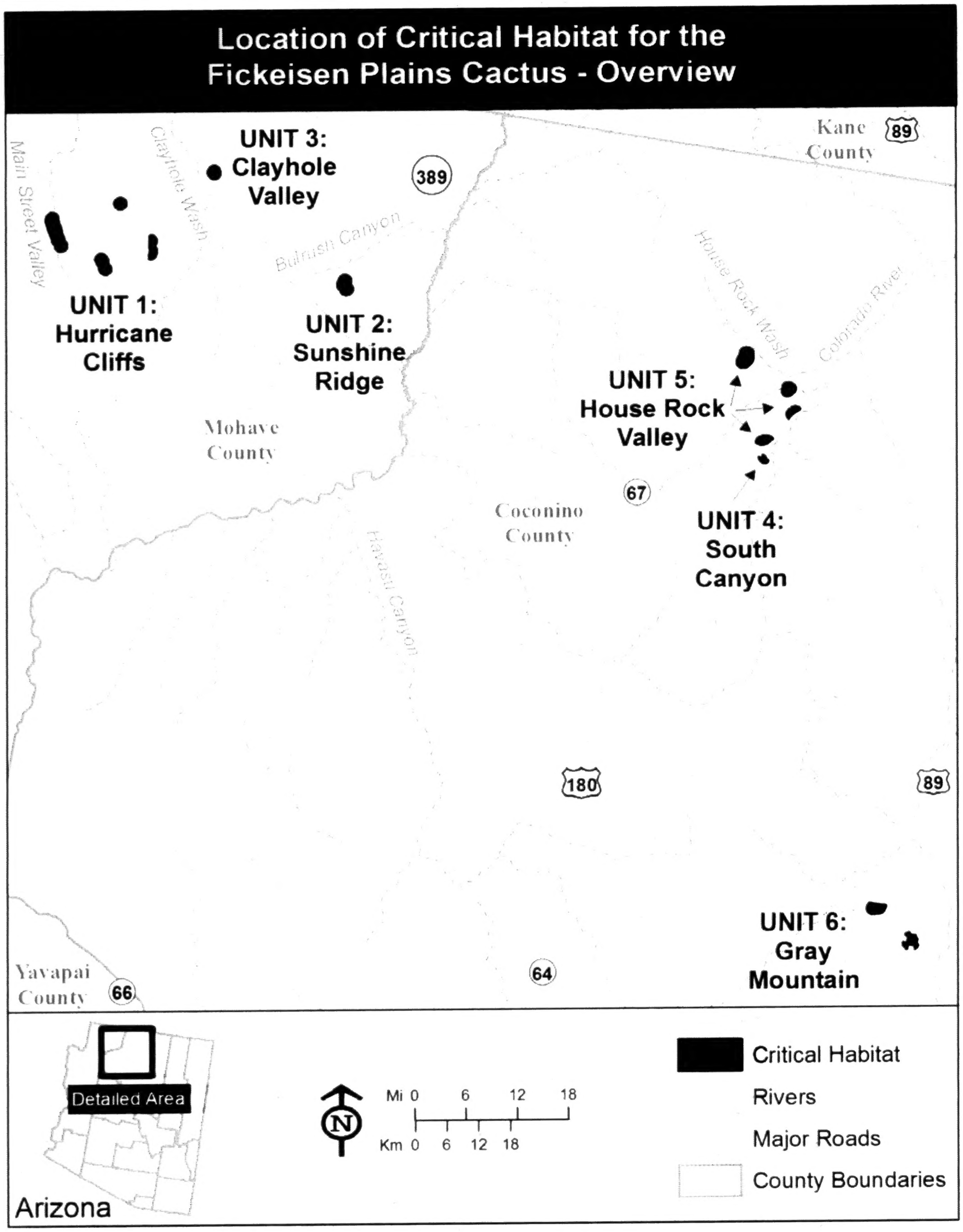
(ii) Native vegetation within the Plains and Great Basin grassland and Great Basin desertscrub vegetation communities from 1,310 to 1,813 m (4,200 to 5,950 ft) in elevation that has a natural, generally intact surface and subsurface that preserves the bedrock substrate and is supportive of microbiotic soil crusts where they are naturally found.

(iii) Native vegetation that provides for habitat of identified pollinators within the effective pollinator distance of 1,000 m (3,280 ft) around each individual Fickeisen plains cactus.

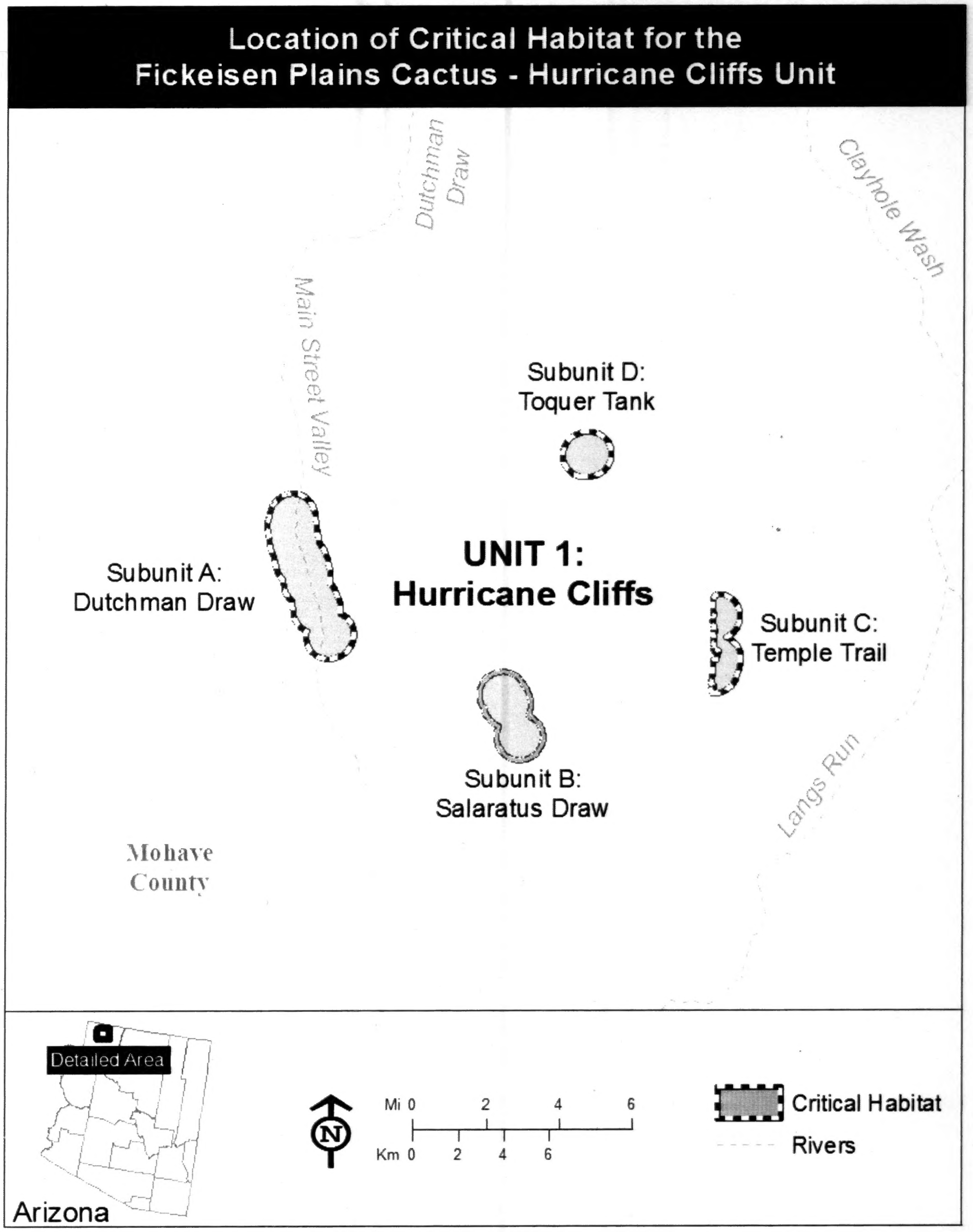
(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on September 19, 2016.

(4) *Critical habitat map units.* Data layers defining map units were created using a base of U.S. Geological Survey 7.5' quadrangle maps. Critical habitat units were then mapped using Universal Transverse Mercator zone 11, North American Datum 1983 coordinates.

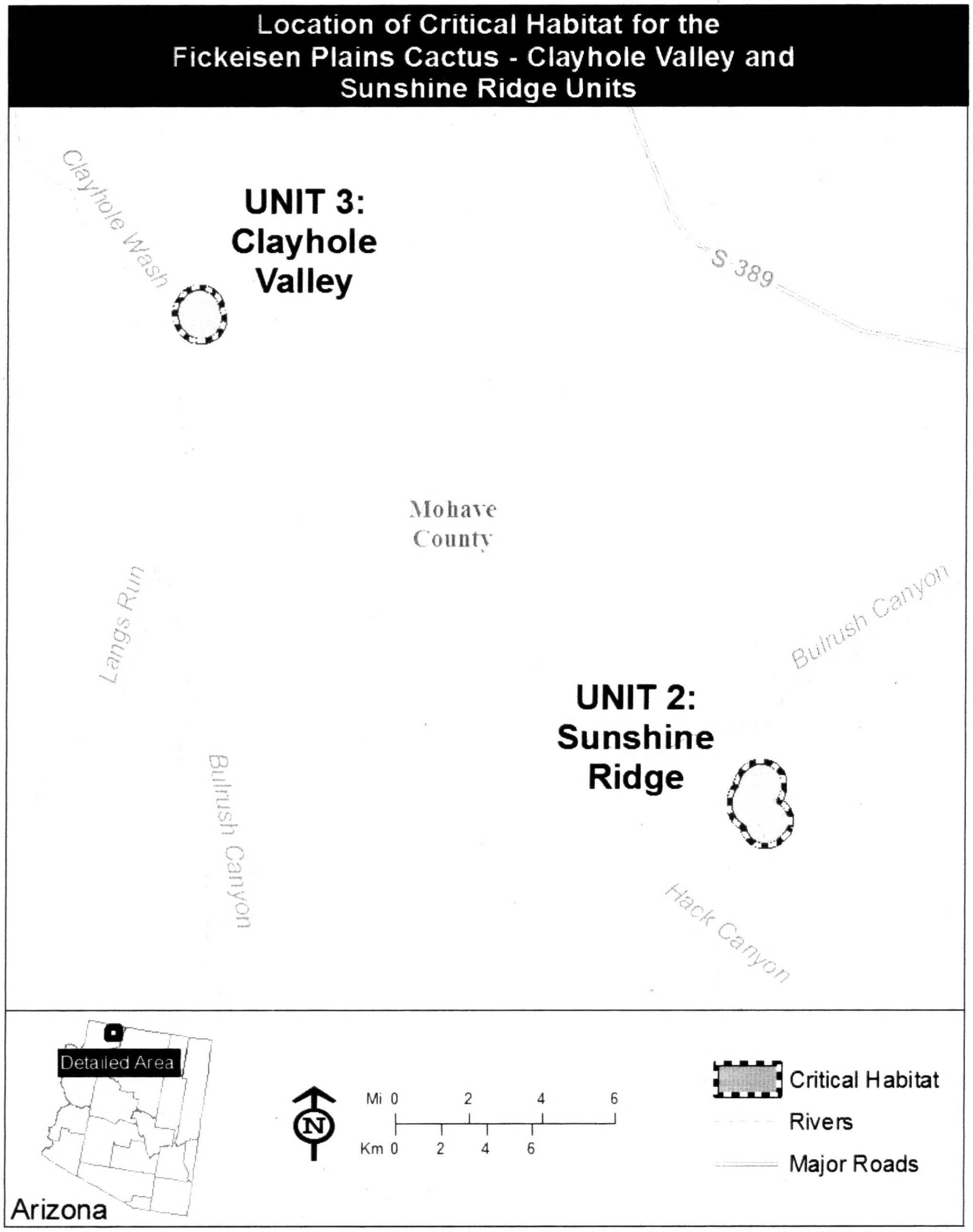
(5) *Note:* Index map follows:


Location of Critical Habitat for the
Fickeisen Plains Cactus - Overview
UNIT 3: Clayhole Valley
UNIT 1: Hurricane Cliffs
UNIT 2: Sunshine Ridge
UNIT 5: House Rock Valley
UNIT 4: South Canyon
UNIT 6: Gray Mountain
Main Street Valley
Clayhole Wash
Bulrush Canyon
House Rock Wash
Colorado River
Havasu Canyon
Kane County
Mohave County
Coconino County
Yavapai County
389
89
67
180
64
66
Detailed Area
Arizona
N
Mi 0 6 12 18
Km 0 6 12 18
Critical Habitat
Rivers
Major Roads
County Boundaries

(6) Unit 1: Hurricane Cliffs Unit, Mohave County, AZ. Map of Unit 1 follows:

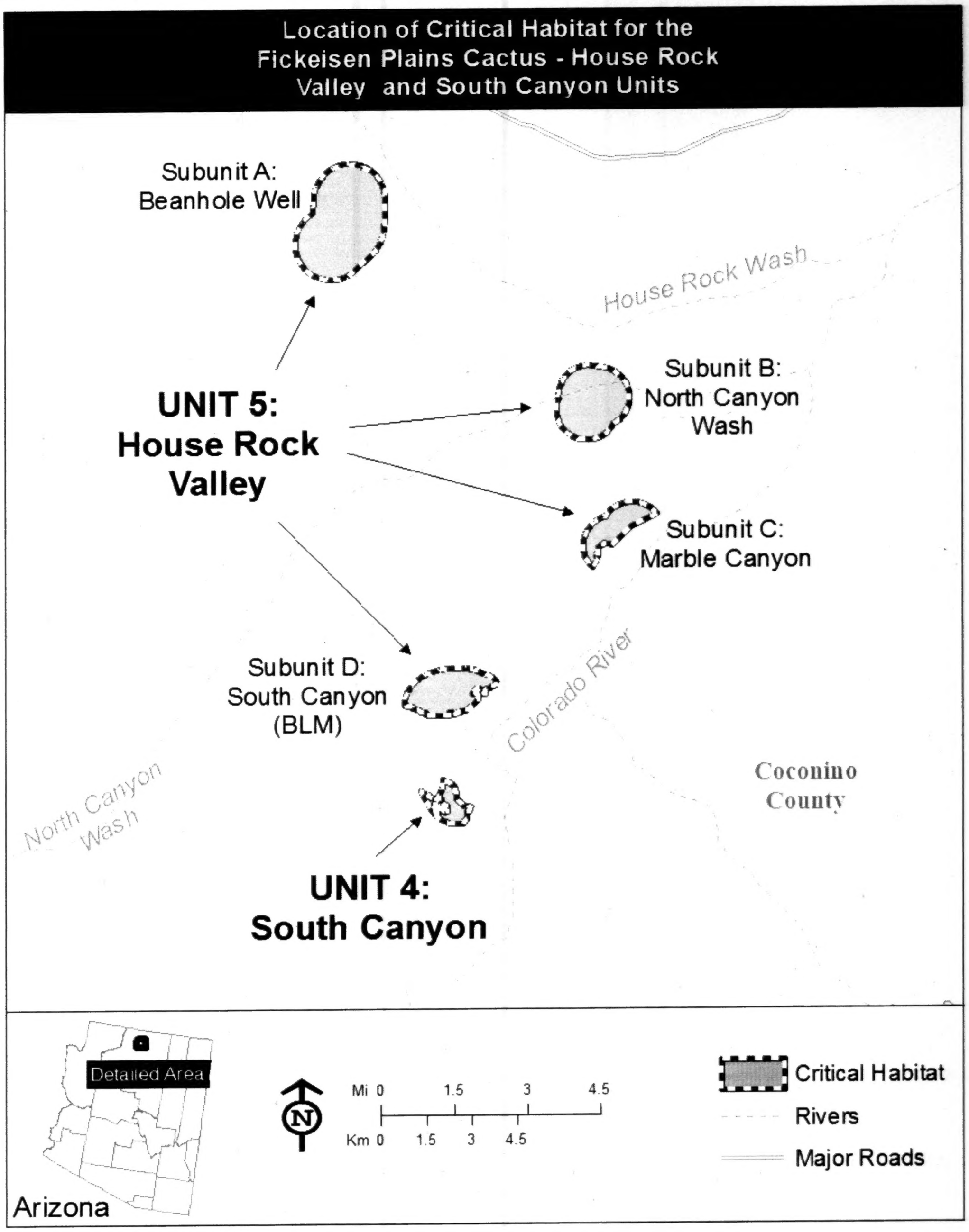

Location of Critical Habitat for the
Fickeisen Plains Cactus - Hurricane Cliffs Unit
Dutchman Draw
Clayhole Wash
Main Street Valley
Subunit D: Toquer Tank
Subunit A: Dutchman Draw
UNIT 1: Hurricane Cliffs
Subunit C: Temple Trail
Subunit B: Salaratus Draw
Langs Run
Mohave County
Detailed Area
Arizona
N
Mi 0 2 4 6
Km 0 2 4 6
Critical Habitat
Rivers

(7) Unit 2: Sunshine Ridge Unit, Mohave County, AZ. Map of Units 2 and 3 follows:


Location of Critical Habitat for the Fickeisen Plains Cactus - Clayhole Valley and Sunshine Ridge Units
Clayhole Wash
UNIT 3: Clayhole Valley
S 389
Mohave County
Langs Run
Bulrush Canyon
Bulrush Canyon
UNIT 2: Sunshine Ridge
Hack Canyon
Detailed Area
Arizona
N
Mi 0 2 4 6
Km 0 2 4 6
Critical Habitat
Rivers
Major Roads

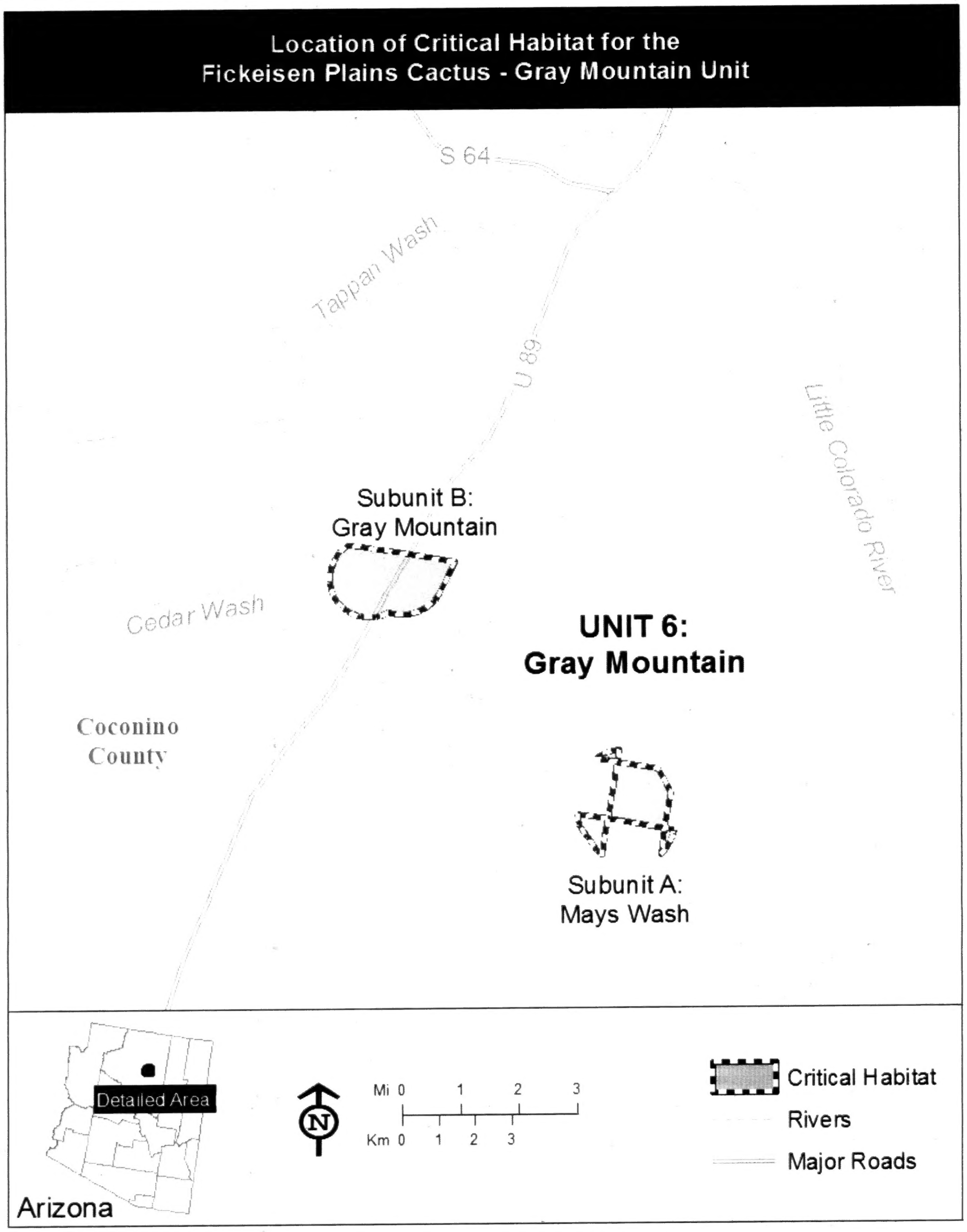
(8) Unit 3: Clayhole Valley Unit, Mohave County, AZ. Map of Unit 3 is provided at paragraph (7) of this entry.

(9) Unit 4: South Canyon Unit, Coconino County, AZ. Map of Unit 4 follows:


Location of Critical Habitat for the Fickeisen Plains Cactus - House Rock Valley and South Canyon Units
Subunit A: Beanhole Well
House Rock Wash
Subunit B: North Canyon Wash
UNIT 5: House Rock Valley
Subunit C: Marble Canyon
Subunit D: South Canyon (BLM)
Colorado River
Coconino County
North Canyon Wash
UNIT 4: South Canyon
Detailed Area
Arizona
N
Mi 0 1.5 3 4.5
Km 0 1.5 3 4.5
Critical Habitat
Rivers
Major Roads

(10) Unit 5: House Rock Valley Unit, Coconino County, AZ. Map of Unit 5 is provided at paragraph (9) of this entry.

(11) Unit 6: Gray Mountain Unit, Coconino County, AZ. Map of Unit 6 follows:


Location of Critical Habitat for the
Fickeisen Plains Cactus - Gray Mountain Unit
S 64
Tappan Wash
U 89
Little Colorado River
Subunit B:
Gray Mountain
Cedar Wash
UNIT 6:
Gray Mountain
Coconino
County
Subunit A:
Mays Wash
Detailed Area
Arizona
N
Mi 0 1 2 3
Km 0 1 2 3
Critical Habitat
Rivers
Major Roads

* * * * *

Dated: July 22, 2016.

Michael J. Bean,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2016–19159 Filed 8–17–16; 8:45 am]

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FEDERAL REGISTER

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No. 160 August 18, 2016

Part III

Federal Communications Commission

47 CFR Parts 0 and 25
Comprehensive Review of Licensing and Operating Rules for Satellite Services; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 25

[FCC 15–167 and FCC 16–58]

Comprehensive Review of Licensing and Operating Rules for Satellite Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission comprehensively streamlines its rules governing licensing and operation of satellites and earth stations to foster more rapid deployment of services, greater investment, and new innovation.

DATES: Effective September 19, 2016. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 19, 2016.

FOR FURTHER INFORMATION CONTACT: Clay DeCell, 202–418–0803, or if concerning the information collections in this document, Cathy Williams, 202–418–2918.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order, FCC 15–167, adopted and released December 17, 2015, and Erratum, FCC 16–58, released May 6, 2016. The full text of the Report and Order is available at *https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-167A1.pdf,* and the text of the Erratum at *https://apps.fcc.gov/edocs_public/attachmatch/DOC-339238A1.pdf.* They also are available for inspection and copying during business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities, send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Synopsis

In a Notice of Proposed Rulemaking (NPRM), 79 FR 65106, the Commission proposed comprehensive changes to its rules and policies governing space stations and earth stations. This Report and Order adopts new rules on the basis of the established record and with the purpose of updating, simplifying, and streamlining the Commission's regulation of satellite services and of reducing burdens on applicants, licensees, and the Commission, consistent with the public interest.

Two-Step Application Process for Advance ITU Filings

We adopt a modified version of the two-step application process proposed in the NPRM. Any party seeking a geostationary-satellite orbit (GSO) space station license from the Commission to provide fixed-satellite service (FSS) in non-planned frequency bands may submit advance publication of information (API) materials to the Commission for forwarding to the International Telecommunication Union (ITU) before submitting a corresponding license application. This initial submission must include a letter request for filing of the API and a signed cost-recovery declaration. The Commission will process and forward up to five APIs from an entity if not accompanied by a Coordination Request and will not assess mutual exclusivity issues. The filing of API materials with the Commission will not establish priority in the Commission's first-come, first-served queue and will not require a fee. Instead, queue status will be established upon filing of Coordination Request materials, as described below.

In order to establish and perfect a queue position under the new, optional, two-step application process, an applicant must submit a draft Coordination Request filing to the Commission, using simplified Form 312 (Main Form), pay the license application fee, and post a $500,000 bond. This first-step application submission will establish a place in the space station application processing queue as of the time that the International Bureau receives the Form 312 and Coordination Request materials. A party submitting an API filing request to the Commission may file associated Coordination Request materials at the same time or at any time within two years of API submission to the ITU. As with APIs, the International Bureau will forward potentially conflicting Coordination Requests to the ITU and issue a public notice announcing that submission. If an applicant later modifies the submitted Coordination Request materials to change the proposed orbital location or to add frequencies, we will reset the queue position for the new or modified operations to the date of receipt of the modified Coordination Request materials by the Commission. We include in this category any modification to the proposed satellite network for which the ITU would require an amended API and would reset the receivable date of the associated Coordination Request, thus delaying the earliest possible date of priority for international coordination. An applicant that has submitted Coordination Request materials and an initial Form 312 to the Commission will be entitled to a refund of the application fee paid if the applicant notifies the Commission that it no longer wishes to keep its application on file before the Commission has issued a public notice announcing that the Coordination Request materials have been submitted to the ITU.

As we observed in the NPRM, the information provided in a Coordination Request is not sufficiently detailed to enable the Commission to determine mutual exclusivity with other space station applications. The queue position of a Coordination Request is, therefore, provisional until the application has been completed. For bands in which we apply two-degree spacing requirements, we will presume that a full application is mutually exclusive with a Coordination Request for co-frequency space station operation within two degrees of orbital separation. Final determination on mutual exclusivity will be done after the full application associated with the Coordination Request is received by the Commission.

The final step is to submit a complete space station license application for operation using the orbital location, frequency bands, and polarization proposed in the Coordination Request, including the information required by 47 CFR 25.114 and 25.140, and the full application fee, within two years of the filing of the initial Coordination Request materials with the Commission.

If a party conveys to the Commission that it no longer wishes to use an API or Coordination Request submitted to the ITU at its request, or if an applicant fails to submit the information required by the second step of the licensing process within the two-year period, any queue status based on the Coordination Request filing will be nullified. In that case, we will issue a public notice announcing any nullification of an applicant's position in the queue and the availability of the API and/or Coordination Request filings and will allow the first party to submit a letter request and cost-recovery declaration to use them. An applicant accepting such abandoned ITU filings will be required to accept any attendant ITU cost-recovery obligations that have not yet been incurred in connection with the filings. In addition, the queue priority date for the applicant accepting the filings will be established as of the time of its request for use of the filings, if it submits an application-stage bond within the 30-day period, or as of the time it submits a complete space station application. We will follow this same procedure if an applicant submitting Coordination Request materials to the Commission fails to file a copy of the required bond with the Commission within 30 days after release of the public notice announcing that the Commission has filed the Coordination Request with the ITU.

Application-Stage Bond

We adopt an application-stage bond requirement as a financial qualification requirement pursuant to our authority under 47 U.S.C. 154(i), 303(r), and 308(b). The bond is part of the initial set of materials—which also includes the simplified FCC Form 312, Main Form, the application fee, and the Coordination Request—that, when submitted, will secure the prospective licensee priority in the Commission's application processing queue. As such, the submission of these materials constitutes the first step of a two-step procedure for filing a satellite license application.

A party that defaults on its obligation to timely file an acceptable application for the operation proposed in a Coordination Request, or Appendix 30B filing as noted below, must forfeit the value of the application-stage bond. We will not allow escrow accounts or letters of credit to satisfy the application-bond requirement. We will release the application-stage bond upon finding that a timely filed application is acceptable for filing, rather than maintaining the bond until the application is ultimately granted.

We will set the application-stage bond amount at $500,000. We will require the $500,000 bond to be posted within 30 days of the release of the public notice announcing that the Coordination Request has been submitted to the ITU. If an applicant fails to timely post the application-stage bond, we will issue a public notice announcing the nullification of that applicant's position in the queue and the availability of the API and Coordination Request filings and will allow the first subsequent party to submit a letter request and cost-recovery declaration to use them. Finally, we will establish an appropriate queue position for all complete requests for submission of Coordination Request materials, and therefore require an application-stage bond for all such requests.

Other Mechanisms To Deter Warehousing

In light of our adoption of an application-stage bond requirement, we will not apply the "Three-Strikes" rule in 47 CFR 25.159(d) to instances in which a complete application is not timely filed after an initial Coordination Request. We also will not include Coordination Request filings in the five-item limit on pending applications and unbuilt authorizations in a particular frequency band, which we eliminate below. Nonetheless, an applicant that has triggered the presumption of the Three-Strikes rule due to repeatedly failing to meet its milestone obligations will be subject to the lowered limit on space station license applications, including first-step filings.

We will, however, limit to five the total number of API filings that a party may request to be submitted through the United States without also timely submitting associated Coordination Request materials and a bond. We will not apply this five-item limit on APIs alone on a per-frequency-band basis. To prevent manipulation of this limit by separate but affiliated entities, we will also apply the attribution criteria in 47 CFR 25.159(c) to entities requesting API filings.

Confidentiality

We adopt our proposal to treat ITU filing requests as confidential only until the Commission submits the filings to the ITU. We generally will make available the API and Coordination Request information once it has been forwarded to the ITU. In cases where the API and Coordination Request are submitted separately, however, we will not disclose the identity of the party requesting the API until after the Coordination Request has been submitted. For Coordination Requests, we will also issue a public notice announcing the submission to the ITU and noting the queued application. Finally, if a later party files without knowledge of an earlier Coordination Request filing with queue priority, we will entertain requests by the later party to withdraw the filing, and cancel any associated bond, within 30 days of the public notice announcing the higher queue priority applicant.

Non-U.S. Licensed Space Stations

We will afford queue priority to space station license applicants that initiate their applications by submitting Coordination Request materials to the Commission for filing at the ITU. Accordingly, if a non-U.S. licensed operator files a request for access to the U.S. market after the filing of a first-step application that is deemed mutually exclusive, we generally will defer action on the market access request until after we have resolved the earlier-filed application or mutual exclusivity concerns have been eliminated through coordination between the parties involved. This is true even in cases where the foreign operator makes use of an ITU filing with an earlier date of protection than the U.S. filing relied upon by the applicant. We employ this queue procedure today when considering a request for access to the U.S. market vis-à-vis an earlier space station license application. Any U.S. license granted, however, will be subject to the outcome of the international coordination process. This may mean that the U.S. licensee may not be able to operate its system if the coordination cannot be appropriately completed.

Scope of Advance ITU Filing Procedure

For "NGSO-like" space station operation, we will submit API and Coordination Request filings prior to receiving a corresponding space station license application. Under 47 CFR 25.157, applications for such space stations are not eligible for first-come, first-served processing, and the information contained in an API or Coordination Request would be insufficient to begin a modified processing round. Therefore, the submission of ITU filings for systems proposing "NGSO-like" operation will not establish any status in the Commission's licensing process. Similarly, we will review and forward filings in bands subject to Appendices 30 and 30A of the ITU Radio Regulations in advance of a license application, and without affording any licensing status, as applications for such Direct Broadcast Satellite systems are also presently not eligible for first-come, first-served processing.

For ITU filings in the FSS bands subject to Appendix 30B, we will follow an optional procedure similar to that adopted for non-planned band operation. Thus, ITU filings to convert an allotment into an assignment, to introduce an additional system, or to modify an assignment in the Appendix 30B List will be treated in the same manner as a Coordination Request filing for GSO FSS operation in non-planned bands. Such filings, accompanied by a simplified Form 312 (Main Form), demonstration or certification described in the following paragraph, and an application-stage bond, will establish a position in the Commission's space station licensing queue. The bond will similarly be forfeited in the event the party does not submit a complete space station application within two years.

Unlike Coordination Requests in non-planned bands, however, we will review a proposed filing under Appendices 30, 30A, or 30B prior to forwarding the filing to the ITU to ensure that it is compatible with other U.S. filings. This review is necessary to protect the rights of existing U.S. filings from being unduly eroded under the relevant ITU protection criteria by another U.S. filing. Accordingly, the party requesting a planned-band filing must either submit the results of an analysis demonstrating that the proposed operation will not "affect" any other U.S. filing under the relevant ITU criteria or, if another filing would be deemed affected, submit a letter signed by the affected operator (which may be the same as the operator requesting the new filing) that it consents to the new filing.

Finally, we will apply the API and Coordination Request procedures described above, including the bond requirement and queue status, to filings and applications for 17/24 GHz BSS space stations, for the same reasons that we are applying them to GSO FSS filings and applications in non-planned bands. The Commission has established a four-degree orbital spacing environment for the 17/24 GHz BSS. Accordingly, we will presume that a full 17/24 GHz BSS space station application is mutually exclusive with a Coordination Request for co-frequency space station operation within four degrees of orbital separation. Final determination on mutual exclusivity will be done after the full application associated with the Coordination Request is received by the Commission.

Milestone Schedules

We will retain only the final milestone requirements to launch and operate the authorized space stations for both GSO and non-geostationary satellite orbit (NGSO) system licensees. We will not allow licensees to submit milestone showings as a means to reduce the surety bond. For GSO systems, licensees will be required to launch and operate the authorized space station(s) within five years from the date the license is issued. For NGSO systems, licensees will be required to operate the complete constellation within six years of grant. Consistent with our current rules, we will impose the same simplified milestone requirements on grants of access to the U.S. market via proposed non-U.S. licensed space stations. We expect that any requests for an extension of time to meet the final milestone requirement will be filed near to the deadline and will demonstrate that, despite the licensee's or market access recipient's diligent efforts, circumstances beyond its control prevent compliance with the milestone requirement.

Milestone Certifications and Other Milestone Proposals

We will not adopt any of the proposals to specify elements of sufficient demonstrations for the contract execution, CDR, and construction commencement milestone requirements. Nor will we allow a licensee to satisfy the final milestone requirement in a new GSO space station authorization by operating any "healthy" satellite at the authorized orbital location, rather than constructing and launching the satellite it had proposed.

Escalating Bond

We adopt an escalating post-grant bond requirement. By increasing over time the potential payment liability under the bond, an escalating bond will create a financial incentive for unprepared or speculative licensees, or licensees whose business plans change, to surrender their authorizations early.

Bond Amounts

We will specify an initial bond payment liability of $1 million for both GSO system licensees and NGSO system licensees under our modified escalating bond requirement. We believe that this amount is substantial enough to deter many applicants from filing applications for strategic motives with the intention of surrendering their licenses shortly after grant. Licensees that do repeatedly surrender their authorizations before satisfying the final milestone requirements may be subject to a lower limit on additional space station applications under the "Three-Strikes" rule.

We will also retain the current bond amounts of $3 million for GSO system licenses and $5 million for NGSO system licenses as the final payment amounts potentially due under the escalating bond. We will not adopt SpaceX's suggestion to create a separate bond category for "NGSO broadband satellite systems."

We will not adopt our proposal to require bond payment amounts due in the event of default to be indexed based on the Gross Domestic Product Chain-type Price Index, which was opposed by all commenting parties. We prefer instead to retain stable payment amounts. This structure is simpler and should provide licensees greater certainty as to their potential liability without significantly reducing the deterrence of the bond requirement.

Under the modified bond requirement, a GSO system licensee must file a surety bond requiring initial payment in the case of license surrender of at least $1 million. The payment amount due to the U.S. Treasury under the bond will increase, pro rata, in proportion to the time that has elapsed since the license was granted to the time of the launch and operate milestone. The amount of the bond itself at any given time, however, must be sufficient to cover the amount due to the Treasury if the licensee were to surrender its license, and may be set at a fixed value that is increased yearly to cover the maximum potential liability in the upcoming year. The payment due upon failing to meet the milestone to launch and operate the authorized space station after five years will be $3 million. Thus, for example, if a GSO system licensee surrenders its authorization two years after grant, the amount due would be equal to the $1 million baseline amount plus a pro rata amount of the remaining $2 million maximum, or $1,000,000 + $2,000,000 × (2 (years)/5 (years)), or $1,800,000.

NGSO system licensees will be required to post a surety bond requiring initial payment in the case of surrender of at least $1 million as well. Payment liability will increase, pro rata, in the same manner, to a final bond payment value of $5 million after six years. In addition to these changes for U.S. licensees, we also make consequential changes to the bond requirements for proposed non-U.S. licensed space stations that have been granted access to the U.S. market but are not in orbit and operating.

We believe that an escalating bond requirement in the amounts we are prescribing, combined with the simplified milestone schedules, will deter warehousing of satellite spectrum more efficiently than is done today.

Treatment of Licensees With Outstanding Interim Milestone Requirements

We will apply the modified bond and milestone requirements to space station licenses and grants of market access granted after the new rules come into effect. In addition, we anticipate that space station licensees and market access recipients with existing grants at the time the new rules come into effect may also wish to proceed under the new bond and milestone regime. In that case, the space station grantee would submit a letter request to replace its current milestone schedule and bond obligation with the single, final milestone and escalating bond requirement. In addition, the space station operator would submit a new or modified bond and be relieved of the obligations under its previous milestone schedule. Existing licensees and market access recipients will also have the option to continue under the bond and milestone conditions established in their grants under the rules currently in effect.

Treatment of Authorizations With Pending Milestone Determinations

Pending before the International Bureau and the Commission are a number of requests for interim milestone determinations for space station licenses and market access grants that have been surrendered, in some cases years ago. See 115 LICENSE SUBSIDIARY, LLC, 17/24 GHz Broadcasting-Satellite Service Space Station at the 115.0° W.L. Orbital Location; Ruling on Milestones Completion, Order, 30 FCC Rcd 2759 (Int'l Bur. 2015) (application for review pending); EchoStar Corporation, IBFS File Nos. SAT–LOA–20020328–00052, SAT–LOA–20020328–00051, SAT–LOA–20070105–00001, SAT–LOA–20070105–00003, SAT–LOA–20020328–00050; Hughes Network Systems, LLC, IBFS File No. SAT–LOA–20111223–00248. Processing these requests as required by 47 CFR 25.164 is extraordinarily time-consuming and resource-intensive, as we have previously noted. And, each of these licenses and grants has been surrendered and made available to others, thus minimizing "warehousing" concerns. Accordingly, we direct the International Bureau to dispose of these pending milestone determination requests by waiving the requirements of 47 CFR 25.164 as needed. These licensees and grantees, of course, will forfeit the remainder of their respective bonds, for which no interim milestone showings have been made.

To encourage further the surrender of licenses granted under the current bond and milestone regime that will not ultimately be put to use, we also direct the International Bureau to consider waiving 47 CFR 25.164 as appropriate regarding milestone demonstrations submitted prior to the adoption of this Second Report and Order for all licenses and market access grants surrendered within 30 days of release of this Second Report and Order.

Retaining the Two-Degree Spacing Policy

We retain our longstanding policy of applying routine technical criteria for GSO FSS operation premised on two-degree orbital separation between space stations, which applies to all U.S.-licensed space station operations and to non-U.S. licensed space station operations that fall within the scope of a grant of U.S. market access.

Continuation of Non-Routine Operations

We adopt the proposal to allow continued transmissions above routine levels upon notice to the Commission, even if such levels are not coordinated with later applicants and petitioners for market access. Space station operators may provide valuable service to users with very small earth station antennas that is not compatible with operation of co-frequency, co-coverage space stations separated by two degrees and transmitting at routine power density levels. Such non-routine operations may be performed without causing harmful interference to other users and in accordance with any coordination agreements required under ITU Radio Regulations and Commission rules or policies. If future operators are given adequate notice of such pre-existing, non-routine operation, we do not believe it serves the public interest to require the existing system to reduce transmit power density levels to protect a later-authorized, two-degree compliant operator, in a manner that may preclude continued provision of the service, in the event the two operators do not come to a successful coordination. Indeed, continuation of such existing operations would promote continuity of service and encourage capital investment. At the same time, we wish to preserve the benefits of expedited processing and reduced costs that accompany the policy of establishing routine transmission criteria for two-degree orbital spacing.

To accommodate this dual goal, we will modify the two-degree spacing policy as follows. An operator of a GSO FSS space station in the conventional or extended C-bands, conventional or extended Ku-bands, or conventional Ka-band may notify the Commission of its non-routine transmission levels and be relieved of the obligation to coordinate such levels with later applicants and petitioners for market access. The letter notification must include the downlink off-axis equivalent isotropically radiated power (EIRP) density levels or power flux density levels and/or uplink off-axis EIRP density levels, specified per frequency range and space station antenna beam, that exceed the relevant routine limits. Once the International Bureau receives the notification, it will issue a public notice announcing the filing. Non-routine transmissions notified pursuant to this procedure need not be coordinated with operators of authorized co-frequency space stations that filed their complete applications or petitions for market access after the date of filing of the notification with the Commission. Such later applicants and petitioners must accept any additional interference caused by the notified non-routine operations, but need not restrict their own transmissions below routine levels to afford greater protection to the incumbent. This procedure will afford existing, non-routine operations a measure of certainty regarding future provision of the service, while preserving for new space station operation the application processing and competitive benefits of providing service at default transmission levels in these bands. In addition, to support continuity of service when non-routine operations are transferred to a replacement space station, we will permit the replacement to operate up to the notified transmission levels of the space station being replaced. In the case of a space station license applicant that files its application without knowledge of a prior-filed notification of non-routine transmission, we will allow the applicant to withdraw its application and receive a refund of any fee paid, to avoid an unfairness that might otherwise arise in this regard.

We recognize that this procedure does not ensure full protection for existing, non-routine operations, notably sensitive earth station receive operations. We refrain at this time, however, from establishing greater protection rights for non-routine operations than can be negotiated through coordination. We expect that the procedure for continuation of non-routine transmissions we adopt here will encourage parties to reach coordination agreements that will preserve to the maximum extent possible the continuity of existing services. If difficulties arise that threaten to disrupt an established service, parties may always bring the matter to the Commission for assistance in finding a mutually satisfactory solution.

Routine Criteria for Downlink Transmission

We adopt our proposal to remove the routine limits on the power density of downlink transmission in the conventional Ku-band and conventional Ka-band from 47 CFR 25.134, 25.138, and 25.212 and insert them in 47 CFR 25.140 as coordination triggers for space station applicants and licensees. In addition, we adopt SES's suggested increases for the proposed limits on digital transmissions in the conventional and extended C-bands and the conventional and extended Ku-bands, excluding in both cases the Appendix 30B planned bands. To the extent that space station operators have negotiated coordination agreements for operation in the extended Ku-band at levels that exceed the routine limits we are adopting, such operation may continue as far as these coordination agreements remain in effect.

Because of the specific Appendix 30B plan applicable to 4500–4800 MHz, 6725–7025 MHz, 10.70–10.95 GHz, 11.20–11.45 GHz, and 12.75–13.25 GHz bands, however, and to avoid harming U.S. filings under Appendix 30B, we will not apply routine downlink criteria to these bands.

Certification of Two-Degree Compatibility

We adopt our proposal to require space station applicants to certify compliance with routine limits in lieu of providing a two-degree spacing interference analysis. Thus, for operation in the covered frequency bands, other than analog video operation, at a location two degrees or more from the nearest co-frequency space station, GSO FSS space station applicants will be required to provide a certification that both downlink and uplink operations will not exceed applicable routine limits unless the non-routine uplink and/or downlink operation is coordinated with operators of authorized space stations within six degrees of their assigned orbital location. We decline the proposal to accept an interference analysis in place of this initial certification. In case difficulties arise during the required coordination, a space station grantee that intends to operate in excess of routine limits may still submit an analysis demonstrating that the proposed operation will not cause harmful interference to a non-consenting operator and request that the Commission permit the non-routine operations. Finally, we note that the requirement for space station applicants to provide a certification of two-degree spacing compatibility does not replace the sharing demonstration or certification required from earth station applicants by 47 CFR 25.203(k).

We also adopt the proposal to require applicants for operation of 17/24 GHz BSS space stations to certify compatibility with the four-degree spacing environment for that service. This certification, based on the downlink PFD limits in 47 CFR 25.208(w) and uplink EIRP density limits in 47 CFR 25.223(c), similarly will provide additional flexibility to operators and reduce administrative burdens on applicants and the Commission.

Geographic Scope of Operations Covered by the Two-Degree Spacing Policy

We will not limit the applicability of the two-degree spacing rules to beams that cover, alone or collectively on the same satellite, all of the entire contiguous United States (CONUS). We note that two-degree spacing rules apply only to those non-U.S. licensed space station operations that fall within the scope of a grant of U.S. market access under the Commission's DISCO II policy. Thus, transmissions between non-U.S. licensed space stations and non-U.S. earth stations are not subject to the policy, and U.S.-licensed operators and applicants need not take these operations into account for purposes of a two-degree spacing analysis or certification. For two U.S.-licensed space stations, however, the default two-degree spacing rules apply to operations anywhere in the world. We believe that the benefits of expedited processing and reduced costs for U.S. applicants that are created by the policy also apply to proposed non-U.S. licensed operations with any U.S.-licensed earth station.

Limits on Aggregate EIRP Density

We anticipate that sharing situations may sometimes arise where a space station employing wide-area beams will operate adjacent to one or more spot beam satellites with multiple co-frequency transmitting earth stations lying within the victim satellite's receiving beam, but not in the same target satellite receiving beam. In such situations, the wide-area-beam satellite system may be subject to aggregate off-axis emissions that exceed the limit permissible for a single earth station. Although we expect that these instances will be infrequent, and that the interference will be largely mitigated by factors such as the decreased G/T of the wide-area beam and the gain roll-off over the service area, we cannot predict in advance its extent or how problematic it may be. If interference due to aggregate off-axis emissions from earth stations transmitting to another satellite does occur, both operators must cooperate fully in order to coordinate their systems so that each may continue its operations. However, coordination will not be required unless the aggregate interference into the receiving beam of the victim satellite, from all co-frequency earth stations transmitting simultaneously to the same target satellite, exceeds the interference that would be generated by a single earth station located at the peak of the victim satellite's receiving antenna beam, and transmitting at the maximum off-axis EIRP density permitted under the relevant rule Section.

Permitted Space Station List

We expand the definition of the Permitted Space Station List to include all GSO FSS space stations licensed or granted U.S. market access in bands where we will have routine licensing criteria for earth stations, *i.e.*, the extended and conventional C-bands, the extended and conventional Ku-bands, the conventional Ka-band, and the 24.75–25.25 GHz band. We will include in the Permitted List designation all non-U.S. licensed space stations that have been granted U.S. market access in these bands, whether the market access is accomplished through a declaratory ruling or a U.S. earth station license. Thus, consistent with our treatment of U.S.-licensed space stations, non-U.S. licensed operators will not need to request specific inclusion on the Permitted List. We also specify that all requests for market access by the space station operator must be submitted through a petition for declaratory ruling, rather than through a Letter of Intent.

Assignments and Transfers of Control of Station Authorizations

We will not require prior approval for *pro forma* assignments and transfers of control of common carrier space station and earth station licenses when the licensee meets the definition of "telecommunications carrier" in the Act. Rather, the *pro forma* assignee or entity that has undergone a *pro forma* change in ownership must file a notification within 30 days of consummation of the transaction. The notification must be provided in a Form 312, Main Form and Schedule A and include a certification that the transfer of control or assignment was *pro forma* and that, together with all previous *pro forma* transactions, it did not result in a change in the actual controlling party. Such notifications will not be subject to application fees. Updated ownership information must also be provided as necessary to ensure that the Commission's records are kept accurate. After receipt of the Form 312, Main Form and Schedule A and any necessary attachments, the Commission will place the notification on public notice as granted. Any interested party that objects to the transaction may, within 30 days from the date upon which public notice is given, file a petition requesting reconsideration.

In addition, we adopt the proposal to deem granted, one business day after filing, all applications for *pro forma* transfer or assignment of non-common carrier space station and earth station licenses. *Pro forma* transfer applications do not raise public interest concerns, and the Commission's review is limited to determining that they are, in fact, *pro forma* in nature. Confirmation that the transaction is *pro forma* may be accomplished during the reconsideration period. To qualify for this procedure, in addition to the other application requirements, parties must certify that the transfer of control or assignment is *pro forma* and that, together with all previous *pro forma* transactions, it will not result in a change in the actual controlling party. The transfer must also not require the Commission to issue any waiver or a declaratory ruling. We will indicate grant of such applications in periodic public notices, and interested parties, and the Commission, will have an opportunity to challenge or revisit the grant.

Earth Station Construction Notification

In the event that an earth station is routinely licensed pursuant to input power density and antenna gain criteria, and the tested performance of the antenna on-site does not fully comply with those antenna gain criteria, we will allow the construction notification requirement in 47 CFR 25.133 to be satisfied if the input power density is reduced such that, when added to the tested antenna gain pattern, the calculated EIRP density levels fall within the relevant EIRP density envelope.

Satellite End-of-Life Disposal

We modify 47 CFR 25.283(c) to delete the word "all" in "all stored energy sources," and change "and other appropriate measures" to "or other appropriate measures." In doing so, we permit a satellite to maintain *de minimis* propellant or pressurant upon disposal. We expect to rely on technical guidance from other sources, including the NASA Technical Standard, Process for Limiting Orbital Debris, NASA–STD–8719.14A and any revisions thereof, to determine whether a space station license applicant's plan to deplete onboard sources of stored energy at satellite end of life will comply with 47 CFR 25.283(c).

Pending Applications

We will apply the rules and procedures we adopt in this Second Report and Order to pending space station and earth station applications. Applying our new rules and procedures to pending space station applications will not impair the rights any applicant had at the time it filed its application. Nor will doing so increase an applicant's liability for past conduct.

Paperwork Reduction Act

This document contains new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on the new or modified information collection requirements contained in this proceeding in a separate **Federal Register** notice.

Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees. We received no comments on this issue. We have assessed the effects of the revisions adopted that might impose information collection burdens on small business concerns, and find that the impact on businesses with fewer than 25 employees will be an overall reduction in burden. The amendments adopted in this Report and Order eliminate unnecessary information filing requirements for licensees and applicants; eliminate unnecessary technical restrictions and enable applicants and licensees to conserve time, effort, and expense in preparing applications and reports. Overall, these changes may have a greater positive impact on small business entities with more limited resources.

Congressional Review Act

The Commission will send copies of this Report and Order to Congress and the General Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), and will send a copy including the final regulatory flexibility act analysis to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (1981).

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Further Notice of Proposed Rulemaking in the Matter of Comprehensive Review of Licensing and Operating Rules for Satellite Services. The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. No comments were received on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Rules

This Order adopts comprehensive changes to part 25 of the Commission's rules, which governs licensing and operation of space stations and earth stations for the provision of satellite communication services. We revise the rules to, among other things, expedite international coordination of proposed satellite networks; eliminate burdens associated with our milestone requirements; more effectively deter warehousing under our post-licensing bond requirement; ensure continuity of service of satellite operations; and clarify and expand routine earth station licensing procedures.

This Order revises multiple sections of part 25 of the rules. Specifically, it revises the rules to:

(1) Allow space station applicants to file through the Commission a satellite network with the International Telecommunication Union up to two years before filing a complete and detailed space station application with the Commission.

(2) Eliminate all of the space station construction milestones, except for the requirement to bring the space station(s) into operation at the assigned location(s) within a specified period of time.

(3) Modify the space station bond requirements to increase liability over time to provide better incentives against spectrum warehousing.

(4) Modify the two-degree spacing policy to permit continued operation of a non-two-degree compliant satellite network to the extent that the transmission levels are notified to the Commission, even if a later applicant does not consent to the higher levels.

(5) Eliminate the requirement for a space station applicant that starts constructing its satellite prior to filing an application with the Commission to notify the Commission in writing that it is doing so at its own risk and expense.

(6) Clarify the requirements to limit aggregate uplink power density from multiple earth stations transmitting to the same satellite.

(7) Provide for the automatic grant of applications for repositioning of space stations with a small offset from the originally authorized orbital location, and for minor repointing of space station antennas.

(8) Allow earth station operators to communicate with a replacement satellite that is deployed with a small

offset from the originally authorized satellite without prior Commission authorization.

(9) Extend the frequency bands in which "routine" earth station licensing is permitted.

(10) Expand routine earth station license qualification options for applicants for earth station operation in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.25–30.0 GHz bands.

(11) Clarify earth station off-axis antenna radiation pattern requirements, and the ranges over which the off-axis radiated power can exceed the specified limits.

(12) Require earth station applicants to file off-axis antenna radiation charts instead of tables except in off-axis angular regions where the off-axis radiation exceeds specified limits.

(13) Eliminate the requirement for portable earth station manufacturers to demonstrate compliance with the radiated power limits in Section 25.204 of the Commission's rules.

(14) Lower the minimum permissible elevation angle for earth stations operating in bands not shared with terrestrial services or in which satellite networks operate bidirectionally from five degrees to three degrees above the horizontal plane.

(15) Eliminate the restrictions on the center frequencies on which analog video transmissions in the 3700–4200 MHz band can be conducted.

(16) Eliminate the restrictions on space station antenna polarization for space stations operating in the 3700–4200 MHz and 5925–6425 MHz bands, and the associated compliance demonstration requirements in the space station application form.

(17) Eliminate the cross-polarization requirement associated with FSS space stations.

(18) Update and improve definitions.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No party filing comments in this proceeding responded to the IRFA, and no party filing comments in this proceeding otherwise argued that the policies and rules proposed in this proceeding would have a significant economic impact on a substantial number of small entities. The Commission has, nonetheless, considered any potential significant economic impact that the rule changes may have on the small entities which are impacted. On balance, the Commission believes that the economic impact on small entities will be positive rather than negative, and that the rule changes move to streamline the part 25 requirements.

Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

Pursuant to the Small Business Jobs Act of 2010, the Commission is required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration, and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

Description and Estimate of the Number of Small Entities to Which the Rules May Apply

The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we describe and estimate the number of small entity licensees that may be affected by the adopted rules.

Satellite Telecommunications and All Other Telecommunications

The rules adopted in this Order will affect some providers of satellite telecommunications services. Satellite telecommunications service providers include satellite and earth station operators. Since 2007, the SBA has recognized two census categories for satellite telecommunications firms: "Satellite Telecommunications" and "Other Telecommunications." Under the "Satellite Telecommunications" category, a business is considered small if it had $32.5 million or less in annual receipts. Under the "Other Telecommunications" category, a business is considered small if it had $32.5 million or less in annual receipts.

The first category of Satellite Telecommunications "comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2007 show that there were a total of 512 satellite communications firms that operated for the entire year. Of this total, 482 firms had annual receipts of under $25 million.

The second category of Other Telecommunications is comprised of entities "primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. We anticipate that some of these "Other Telecommunications firms," which are small entities, are earth station applicants/licensees that will be affected by our adopted rule changes.

We anticipate that our rule changes will have an impact on earth and space station applicants and licensees. Space station applicants and licensees, however, rarely qualify under the definition of a small entity. Generally, space stations cost hundreds of millions of dollars to construct, launch and operate. Consequently, we do not anticipate that any space station operators are small entities that would be affected by our actions.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The Order adopts a number of rule changes that will affect reporting, recordkeeping and other compliance requirements for earth and space station operators. Most changes, as described below, will decrease the burden for all businesses operators, especially firms that hold licenses to operate earth stations.

We streamline and reorganize the rules to facilitate improved compliance. First, the Order simplifies information collections in applications for earth station licenses, and increases the number of earth station applications eligible for routine processing. Specifically, the Order eliminates reporting requirements that are more burdensome than necessary. For example, because it may be more convenient for some applicants to qualify for routine licensing based on certification of conformance with off-axis gain and input power density criteria than to submit data to demonstrate compliance with routine off-axis EIRP density limits, we incorporate alternative off-axis gain and input power density criteria in the rules for applicants for earth stations transmitting to geostationary satellites in the 28.35–28.6 GHz and/or 29.25–30.0 GHz bands. Thus, an applicant for such earth stations can qualify for routine licensing either by demonstrating that it will meet the off-axis EIRP density criteria or by certifying conformance with off-axis gain standards and specifying input power density consistent with the proposed criteria.

Another example is that we see no reason to require earth station antenna gain to be measured in all directions. We, therefore, delete language that may ambiguously imply requirements beyond the intended rules. Additionally, we amend a provision to require gain to be measured at the bottom and top of each band assigned for uplink transmission, but eliminate the required measurement at the middle of the allocated frequency band. The Order also expands routine licensing eligibility to include ''extended C-band'' earth stations.

We amend the rules to allow earth station operators to slightly repoint their antennas without prior approval for communication with a GSO replacement satellite within ±0.15° of the originally authorized location. We also eliminate the need to license receive-only earth stations communicating with non-U.S. licensed space stations approved for U.S. market access. We clarify that provisions to qualify for routine licensing for earth station applicants proposing to transmit in the conventional C-band, the conventional Ku-band, or the 24.75–25.25 GHz band also apply to earth stations that use allocated FSS frequencies to provide feeder links for non-FSS space stations, *e.g.*, feeder links for Mobile-Satellite Service (MSS) or BSS space stations.

The Order also changes filing requirements. For example, we remove the requirement on applicants for earth station operation in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.25–30.0 GHz bands to submit antenna gain plots for the receive bands. We also delete requirements for portable earth station transceivers to demonstrate compliance with certain rule sections.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

The Commission is aware that some of the revisions may impact small entities. The NPRM sought comment from all interested parties, and small entities were encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the NPRM. No commenters raised any specific concerns about the impact of the revisions on small entities. This order adopts rule revisions to modernize the rules and advance the satellite industry. The revisions eliminate unnecessary requirements and expand routine processing to applications in additional frequency bands, among other changes. Together, the revisions in this Order lessen the burden of compliance on small entities with more limited resources than larger entities.

The adopted changes for earth station licensing clarify requirements for routine licensing and expand applicability of routine licensing standards. Each of these changes will lessen the burden in the licensing process. Specifically, this Order adopts revisions to provide alternatives for filing requirements, reduce filing requirements and clarify antenna pattern measurement requirements in such a way that applicant burden will be reduced. Thus, the revisions will ultimately lead to benefits for small earth station operators in the long-term.

Incorporation by Reference

This final rule incorporates by reference five elements of the ITU Radio Regulations, Edition of 2012, into part 25 for specific purposes:

(1) ITU Radio Regulations, Article 9, ''Procedure for effecting coordination with or obtaining agreement of other administrations,'' Section II, ''Procedure for effecting coordination.''

(2) ITU Radio Regulations, Appendix 30, ''Provisions for all services and associated Plans and List for the broadcasting-satellite service in the frequency bands 11.7–12.2 GHz (in Region 3), 11.7–12.5 GHz (in Region 1) and 12.2–12.7 GHz (in Region 2).''

(3) ITU Radio Regulations, Appendix 30A, ''Provisions and associated Plans and List for feeder links for the broadcasting-satellite service (11.7–12.5 GHz in Region 1, 12.2–12.7 GHz in Region 2 and 11.7–12.2 GHz in Region 3) in the frequency bands 14.5–14.8 GHz and 17.3–18.1 GHz in Regions 1 and 3, and 17.3–17.8 GHz in Region 2.''

(4) ITU Radio Regulations, Appendix 30B, ''Provisions and associated Plan for the fixed-satellite service in the frequency bands 4 500–4 800 MHz, 6 725–7 025 MHz, 10.70–10.95 GHz, 11.2–11.45 GHz and 12.75–13.25 GHz.''

(5) ITU–R Recommendation S.1503–2, ''Functional description to be used in developing software tools for determining conformity of non-geostationary-satellite orbit fixed-satellite system networks with limits contained in Article 22 of the Radio Regulations,'' December 2013.

Materials (1) through (4) above are available for free download at *http://www.itu.int/pub/R-REG-RR-2012.* ITU–R Recommendation S.1503–2 is available for free download at *http://www.itu.int/rec/R-REC-S.1503-2-201312-I.* In addition, copies of all of the materials are available for purchase from the ITU through the contact information provided in new section 25.108, and are available for public inspection at the Commission address noted in the rule as well.

Article 9, Section II concerns the procedures for international coordination of frequency assignments for most space stations licensed by the Commission. Articles 30, 30A, and 30B govern international use of the BSS, associated feeder-link, and FSS planned bands, respectively. ITU–R Recommendation S.1503–2 describes means to evaluate equivalent power-flux density of certain NGSO FSS systems. The relation of these materials to specific requirements in part 25 is noted above in the discussions of the specific requirements. Applicants and licensees affected by rule sections including these materials by reference should become familiar with the incorporated materials.

Ordering Clauses

IT IS ORDERED, pursuant to 47 U.S.C. 154(i), 157(a), 160, 161, 303(c), 303(f), 303(g), 303(r), 308(b), that this Report and Order is adopted, the policies, rules, and requirements discussed herein are adopted, and part 25 of the Commission's rules is amended as set forth below.

IT IS FURTHER ORDERED that the International Bureau is delegated authority to issue Public Notices consistent with this Report and Order.

IT IS FURTHER ORDERED that the International Bureau will issue a Public Notice announcing the effective date for all of the changes adopted in this Report and Order.

IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 0

Administrative practice and procedure.

47 CFR Part 25

Administrative practice and procedure, earth stations, incorporation by reference, satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0 and 25 as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. In § 0.457, add paragraph (d)(1)(vii)(C) to read as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

(1) * * *

(vii) * * *

(C) APIs submitted pursuant to § 25.111(e) of this chapter and Coordination Requests filed pursuant to § 25.110(b)(3)(i) of this chapter are not routinely available for public inspection before the Commission submits the Coordination Request to the ITU. Submission of Coordination Requests to the ITU will be announced by public notice pursuant to § 25.151(a)(9) of this chapter.

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PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 is revised to read as follows:

Authority: Interprets or applies 47 U.S.C. 154, 301, 302, 303, 307, 309, 310, 319, 332, 605, and 721, unless otherwise noted.

■ 4. In § 25.103, add definitions of "Conventional C-band," "Conventional Ka-band," "Conventional Ku-band," "Extended C-band," "Plane perpendicular to the GSO arc," "Plane tangent to the GSO arc," "Skew angle," and "Two-degree-compliant space station" in alphabetical order; remove the definitions of "12/14 GHz bands," "20/30 GHz bands," and "C band"; and revise the definitions of "Extended Ku band," "NGSO FSS gateway earth station," "Protection areas," and "Routine processing or licensing" to read as follows:

§ 25.103 Definitions.

* * * * *

Conventional C-band. The 3700–4200 MHz (space-to-Earth) and 5925–6425 MHz (Earth-to-space) FSS frequency bands.

Conventional Ka-band. The 18.3–18.8 GHz (space-to-Earth), 19.7–20.2 GHz (space-to-Earth), 28.35–28.6 GHz (Earth-to-space), and 29.25–30.0 GHz (Earth-to-space) frequency bands, which the Commission has designated as primary for GSO FSS operation.

Conventional Ku-band. The 11.7–12.2 GHz (space-to-Earth) and 14.0–14.5 GHz (Earth-to-space) FSS frequency bands.

* * * * *

Extended C-band. The 3600–3700 MHz (space-to-Earth), 5850–5925 MHz (Earth-to-space), and 6425–6725 MHz (Earth-to-space) FSS frequency bands.

Extended Ku-band. The 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), and 13.75–14.0 GHz bands (Earth-to-space) FSS frequency bands.

* * * * *

NGSO FSS gateway earth station. An earth station or complex of multiple earth station antennas that supports the routing and switching functions of an NGSO FSS system and that does not originate or terminate communication traffic. An NGSO FSS gateway earth station may also be used for telemetry, tracking, and command transmissions and is not for the exclusive use of any customer.

* * * * *

Plane perpendicular to the GSO arc. The plane that is perpendicular to the "plane tangent to the GSO arc," as defined below, and includes a line between the earth station in question and the GSO space station that it is communicating with.

Plane tangent to the GSO arc. The plane defined by the location of an earth station's transmitting antenna and a line in the equatorial plane that is tangent to the GSO arc at the location of the GSO space station that the earth station is communicating with.

* * * * *

Protection areas. The geographic regions where U.S. Department of Defense meteorological satellite systems or National Oceanic and Atmospheric Administration meteorological satellite systems, or both such systems, receive signals from low earth orbiting satellites. Also, areas around NGSO MSS feeder-link earth stations in the 1.6/2.4 GHz Mobile-Satellite Service determined in the manner specified in § 25.203(j).

* * * * *

Routine processing or licensing. Expedited processing of unopposed applications for earth stations in the FSS communicating with GSO space stations that satisfy the criteria in §§ 25.138(a), 25.211(d), 25.212(c), 25.212(d), 25.212(e), 25.212(f), 25.218, or 25.223(b), include all required information, are consistent with all Commission rules, and do not raise any policy issues. Some, but not all, routine earth station applications are eligible for an autogrant procedure under § 25.115(a)(3).

* * * * *

Skew angle. The angle between the minor axis of an axially asymmetric antenna beam and the plane tangent to the GSO arc.

* * * * *

Two-degree-compliant space station. A GSO FSS space station operating in the conventional or extended C-bands, the conventional or extended Ku-bands, or the conventional Ka-band within the limits on downlink EIRP density or PFD specified in § 25.140(a)(3) and communicating only with earth stations operating in conformance with routine uplink parameters specified in §§ 25.138(a), 25.211(d), 25.212(c), (d), or (f), 25.218, 25.221(a)(1) or (a)(3), 25.222(a)(1) or (a)(3), 25.226(a)(1) or (a)(3), or 25.227(a)(1) or (a)(3).

* * * * *

■ 5. Add § 25.108 to read as follows:

§ 25.108 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the Commission must publish a document in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at the Federal Communications Commission, 445 12th Street SW., Reference Information Center, Room CY–A257, Washington, DC 20554, 202–418–0270, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030 or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Telecommunication Union (ITU), Place des Nations, 1211 Geneva 20 Switzerland; *www.itu.int;* Voice: +41 22 730 5111; Fax: +41 22 733 7256; email: *itumail@itu.int.*

(1) ITU Radio Regulations, Volume 1: Articles, Article 9, "Procedure for effecting coordination with or obtaining agreement of other administrations," Section II, "Procedure for effecting coordination," Edition of 2012, *http://www.itu.int/pub/R–REG–RR–2012.* Incorporation by reference approved for § 25.111(e).

(2) ITU Radio Regulations, Volume 2: Appendices, Appendix 30, "Provisions for all services and associated Plans and List for the broadcasting-satellite service in the frequency bands 11.7–12.2 GHz (in Region 3), 11.7–12.5 GHz (in Region 1) and 12.2–12.7 GHz (in Region 2)," Edition of 2012, *http://www.itu.int/pub/R–REG–RR–2012.* Incorporation by reference approved for §§ 25.117(h) and 25.118(e).

(3) ITU Radio Regulations, Volume 2: Appendices, Appendix 30A, "Provisions and associated Plans and List for feeder links for the broadcasting-satellite service (11.7–12.5 GHz in Region 1, 12.2–12.7 GHz in Region 2 and 11.7–12.2 GHz in Region 3) in the frequency bands 14.5–14.8 GHz and 17.3–18.1 GHz in Regions 1 and 3, and 17.3–17.8 GHz in Region 2," Edition of 2012, *http://www.itu.int/pub/R-REG-RR-2012.* Incorporation by reference approved for §§ 25.110(b), 25.117(h), and 25.118(e).

(4) ITU Radio Regulations, Volume 2: Appendices, Appendix 30B, "Provisions and associated Plan for the fixed-satellite service in the frequency bands 4 500–4 800 MHz, 6 725–7 025 MHz, 10.70–10.95 GHz, 11.2–11.45 GHz and 12.75–13.25 GHz," Edition of 2012, *http://www.itu.int/pub/R-REG-RR-2012.* Incorporation by reference approved for §§ 25.110(b) and 25.140(a).

(5) Recommendation ITU–R S.1503–2, "Functional description to be used in developing software tools for determining conformity of non-geostationary-satellite orbit fixed-satellite system networks with limits contained in Article 22 of the Radio Regulations," December 2013, *http://www.itu.int/rec/R-REC-S.1503-2-201312-I.* Incorporation by reference approved for § 25.146(a).

■ 6. In § 25.110, revise paragraphs (b) and (f) to read as follows:

§ 25.110 Filing of applications, fees, and number of copies.

* * * * *

(b) *Submitting your application.* (1) All earth station license applications must be filed electronically on FCC Form 312 in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(2) Except as provided in paragraph (b)(3) of this section, applications for space station licenses must be filed electronically on FCC Form 312 in accordance with the applicable provisions of part 1, subpart Y of this chapter and include all information required by § 25.114.

(3) A license application for 17/24 GHz BSS space station operation or for GSO FSS space station operation not subject to the provisions in Appendix 30A of the ITU Radio Regulations (incorporated by reference, *see* § 25.108) may be submitted in two steps, as follows:

(i) An application for 17/24 GHz BSS space station operation or for GSO FSS space station operation not subject to the provisions in Appendix 30B of the ITU Radio Regulations (incorporated by reference, *see* § 25.108) may be initiated by filing with the Commission, in accordance with the applicable provisions of part 1, subpart Y of this chapter, a draft Coordination Request and simplified Form 312 for the proposed operation and a declaration of acceptance of ITU cost-recovery responsibility in accordance with § 25.111(d). The simplified Form 312, Main Form submission must include the information required by items 1–17, 43, 45, and 46.

(ii) An application for GSO FSS space station operation subject to the provisions in Appendix 30B of the ITU Radio Regulations (incorporated by reference, *see* § 25.108) may be initiated by submitting to the Commission, in accordance with the applicable provisions of part 1, subpart Y of this chapter, a draft ITU filing to convert an allotment into an assignment, to introduce an additional system, or to modify an assignment in the Appendix 30B List accompanied by a simplified Form 312 and a declaration of acceptance of ITU cost-recovery responsibility in accordance with § 25.111(d). The simplified Form 312, Main Form submission must include the information required by items 1–17, 43, 45, and 46. In addition, the applicant must submit the results of an analysis demonstrating that no U.S. filing under Appendix 30B would be deemed affected by the proposed operation under the relevant ITU criteria or, for any affected filings, a letter signed by the affected operator that it consents to the new filing.

(iii) An application initiated pursuant to paragraphs (b)(3)(i) or (b)(3)(ii) of this section will be considered completed by the filing of an FCC Form 312 and the remaining information required in a complete license application, including the information required by § 25.114, within two years of the date of submission of the initial application materials.

* * * * *

(f) An applicant must pay the appropriate filing fee in accordance with part 1, subpart G of this chapter, at the time when it files a FCC Form 312.

■ 7. In § 25.111, revise the section heading and paragraph (d) and add paragraph (e) to read as follows:

§ 25.111 Additional information, ITU filings, and ITU cost recovery.

* * * * *

(d) The Commission will submit filings to the ITU on behalf of an applicant, licensee, or other requesting party only after the party has filed a signed declaration of unconditional acceptance of all consequent ITU cost-recovery responsibility. Applicants and licensees must file the declaration electronically in the "Other Filings" tab of the application file in the IBFS database, and must also mail a paper copy to the International Bureau, Satellite Division. In addition, applicants and licensees must reference the call sign and name of the satellite network in the declaration. All cost-recovery declarations must include the name(s), address(es), email address(es), and telephone number(s) of a contact person, or persons, responsible for cost recovery inquiries and ITU correspondence and filings. Supplements must be filed as necessary to apprise the Commission of changes in the contact information until the ITU cost-recovery responsibility is discharged. The applicant, licensee, or other party must remit payment of any resultant cost-recovery fee to the ITU by the due date specified in the ITU invoice, unless an appeal is pending with the ITU that was filed prior to the due date. A license granted in reliance on such a commitment will be conditioned upon discharge of any such cost-recovery obligation. Where an applicant or licensee has an overdue ITU cost-recovery fee and does not have an appeal pending with the ITU, the Commission will dismiss any application associated with that satellite network.

(e) The Commission will process and forward to the ITU up to five Advance Publication filings by an entity that are not accompanied by a complete space station license application or by an application pursuant to § 25.110(b)(3)(i) or (b)(3)(ii). Such Advance Publication filing requests not contained in an application must be accompanied by a letter request and a signed ITU cost-recovery declaration pursuant to paragraph (d) of this section. A request for filing of Advance Publication information will be attributed to an entity in the same manner as a space station license application under the criteria set forth in § 25.159(c).

Note to Paragraph (e): After June 30, 2016, the Commission will not forward Advance Publication information for satellite networks or systems subject to Article 9, Section II of the ITU Radio Regulations (incorporated by reference, *see* § 25.108).

■ 8. In § 25.112, revise the section heading, the first sentence in paragraph (b) introductory text, and paragraph (c) and add paragraph (d) to read as follows:

§ 25.112 Dismissal and return of applications.

* * * * *

(b) Applications for space station authority found defective under paragraph (a)(3) or (a)(4) of this section will not be considered. * * *

* * * * *

(c) The Commission will dismiss an application for failure to prosecute or for failure to respond substantially within a specified time period to official correspondence or requests for additional information. Dismissal will be without prejudice unless the application is mutually exclusive pursuant to § 25.155, in which case it will be dismissed with prejudice.

(d) An application will be dismissed without prejudice as a matter of right if the applicant requests its dismissal prior to final Commission action.

■ 9. In § 25.113, revise the section heading and paragraphs (f), (g), and (h) and add paragraph (i) to read as follows:

§ 25.113 Station construction, deployment approval, and operation of spare satellites.

* * * * *

(f) Construction permits are not required for U.S.-licensed space stations, except for stations that the applicant proposes to operate to disseminate program content to be received by the public at large, rather than only by subscribers. Construction of a station for which a construction permit is not required may commence, at the applicant's own risk, prior to grant of a license.

(g) Except as set forth in paragraphs (h) and (i) of this section, approval for orbital deployment and a station license (*i.e.,* operating authority) must be applied for and granted before a space station may be deployed and operated in orbit. Approval for orbital deployment may be requested in an application for a space station license. However, an application for authority to deploy and operate an on-ground spare satellite will be considered pursuant to the following procedures:

(1) Applications for deployment and operation of an on-ground spare NGSO-like satellite will be considered pursuant to the procedures set forth in § 25.157, except as provided in paragraph (g)(3) of this section.

(2) Applications for deployment and operation of an on-ground spare GSO-like satellite will be considered pursuant to the procedures set forth in § 25.158, except as provided in paragraph (g)(3) of this section.

(3) Neither paragraph (g)(1) nor (g)(2) of this section will apply in cases where the space station to be deployed is determined to be an emergency replacement for a previously authorized space station that has been lost as a result of a launch failure or a catastrophic in-orbit failure.

(h) An operator of NGSO space stations under a blanket license granted by the Commission need not apply for license modification to operate technically identical in-orbit spare satellites in an authorized orbit. However, the licensee must notify the Commission within 30 days of bringing an in-orbit spare into service and certify that its activation has not exceeded the number of space stations authorized to provide service and that the licensee has determined by measurement that the activated spare is operating within the terms of the license.

(i) An operator of NGSO space stations under a blanket license granted by the Commission need not apply for license modification to deploy and operate technically identical replacement satellites in an authorized orbit within the term of the system authorization. However, the licensee must notify the Commission of the intended launch at least 30 days in advance and certify that its operation of the additional space station(s) will not increase the number of space stations providing service above the maximum number specified in the license.

■ 10. In § 25.114, revise paragraphs (a), (b), (c)(4)(vi)(D), (c)(13), (d)(10), and (d)(15)(i), (iii), and (iv) to read as follows:

§ 25.114 Applications for space station authorizations.

(a)(1) A license application filed pursuant to § 25.110(b)(2) for a GSO space station or NGSO space station or space-station constellation must comprise a comprehensive proposal and must be submitted on FCC Form 312, Main Form and Schedule S, with attached exhibits required by paragraph (d) of this section.

(2) An application for blanket authority for an NGSO constellation of space stations that are not all technically identical must provide the information required by paragraphs (c) and (d) of this section for each type of station in the constellation.

(3) For an application filed pursuant to the two-step procedure in § 25.110(b)(3), the filing pursuant to § 25.110(b)(3)(iii) must be submitted on FCC Form 312, Main Form and Schedule S, with attached exhibits as required by paragraph (d) of this section, and must constitute a comprehensive proposal.

(b) Each application for a new or modified space station authorization must contain the formal waiver required by 47 U.S.C. 304.

(c) * * *

(4) * * *

(vi) * * *

(D) For a space station with steerable beams that are not shapeable, specify the applicable contours, as defined in paragraph(c)(4)(vi)(A) or (c)(4)(vi)(B) of this section, with a description of a proposed coverage area for each steerable beam or provide the contour information described in paragraph (c)(4)(vi)(C) of this section for each steerable beam.

* * * * *

(13) And the polarization information necessary to determine compliance with § 25.210(i).

* * * * *

(d) * * *

(10) An application for space station authorization in the 1.6/2.4 GHz or 2

GHz Mobile-Satellite Service must include information required by § 25.143(b);

* * * * *

(15) * * *

(i) If the applicant proposes to operate in the 17.3–17.7 GHz frequency band, a demonstration that the proposed space station will comply with the power flux density limits in § 25.208(w) unless the applicant provides a certification under paragraph (d)(15)(ii) of this section.

* * * * *

(iii) If the applicant proposes to provide international service in the 17.7–17.8 GHz frequency band, a certification that the proposed space station will comply with the power flux density limits in § 25.208(c).

(iv) Any information required by §§ 25.264(a)(6), 25.264(b)(4), or 25.264(d).

* * * * *

§ 25.115 [Amended]

■ 11. Amend § 25.115 as follows:
■ a. Revise the section heading;
■ b. Revise paragraph (a)(2) introductory text and paragraphs (a)(2)(iii) through (vii);
■ c. Remove paragraphs (a)(2)(viii) and (ix);
■ d. Revise paragraph (c)(1), paragraph (c)(2) introductory text, and paragraph (c)(2)(i) introductory text;
■ e. Add paragraph (c)(3);
■ f. Remove the word "CSAT" and "(CSATs)" each place they appear in paragraph (c);
■ g. Revise paragraph (e);
■ h. Revise the second sentence in paragraph (f);
■ i. Revise paragraph (g) introductory text, and paragraphs (g)(1) and (2);
■ j. Remove and reserve paragraph (h); and
■ k. Revise paragraphs (i) and (k).

§ 25.115 Applications for earth station authorizations.

(a) * * *

(2) Applicants for licenses for transmitting earth stations in the FSS may file on FCC Form 312EZ if all of the following criteria are met:

* * * * *

(iii) The application meets all relevant criteria in §§ 25.211 or 25.212 or includes information filed pursuant to paragraph (g)(1) of this section indicating that off-axis EIRP density from the proposed earth stations will not exceed relevant levels specified in §§ 25.138(a) or 25.218;

(iv) Operation of the proposed station has been successfully coordinated with terrestrial systems, if the station would transmit in the 5925–6425 MHz band;

(v) The application includes an environmental impact statement pursuant to § 1.1311 of this chapter, if required;

(vi) The applicant does not propose to communicate via non-U.S.-licensed space stations not on the Permitted Space Station List; and

(vii) If the proposed station(s) will receive in the 18.3–18.8 GHz and/or 19.7–20.2 GHz bands, the applicant proposes to communicate only via satellites for which coordination has been completed pursuant to Footnote US334 of the U.S. Table of Frequency Allocations with respect to Federal Government systems authorized on a primary basis, under an agreement previously approved by the Commission and the National Telecommunications and Information Administration, and the applicant certifies that it will operate consistently with the agreement.

* * * * *

(c)(1) *Networks of earth stations operating in the 11.7–12.2 GHz and 14.0–14.5 GHz bands with U.S.-licensed or non-U.S.-licensed space stations for domestic or international services.* Applications to license networks of earth stations operating in any portion of the 11.7–12.2 GHz and 14.0–14.5 GHz bands under blanket operating authority may be filed on FCC Form 312 or Form 312EZ, with a Schedule B for each large (5 meters or larger) hub station antenna and each representative type of small antenna (less than 5 meters) operating within the network.

(i) Applications to license networks of earth stations operating in the 11.7–12.2 GHz and 14.0–14.5 GHz bands under blanket operating authority that meet the requirements of §§ 25.212(c) or 25.218(e) or (f) will be routinely processed.

(ii) Applications to license networks of earth stations operating in the 11.7–12.2 GHz and 14.0–14.5 GHz bands under blanket operating authority that do not meet the requirements of §§ 25.212(c) or 25.218(e) or (f) must comply with the requirements in § 25.220 and must be filed on FCC Form 312 with a Schedule B for each large (5 meters or larger) hub station antenna and each representative type of small antenna (less than 5 meters) operating within the network.

(c)(2) *Networks of earth stations operating in the 3700–4200 MHz and 5925–6425 MHz bands.* Applications to license networks of earth stations operating in the 3700–4200 MHz and 5925–6425 MHz bands must be filed electronically on FCC Form 312, Main Form and Schedule B. Applications will be routinely processed provided that frequency coordination has been satisfactorily completed and that the proposed earth stations comply with the applicable provisions in §§ 25.211(d) or 25.212(d). Alternatively, applicants that have satisfactorily completed frequency coordination may be routinely processed if the proposed earth stations comply with the applicable off-axis EIRP density limits in § 25.218(c) or (d).

(i) For earth station antennas operating with power levels not consistent with the applicable provisions in §§ 25.211(d) or 25.212(d), or with EIRP density levels not consistent with those specified in § 25.218(c) or (d), the applicant must file an initial lead application providing a detailed overview of the complete network. Such lead applications must fully identify the scope and nature of the service to be provided, as well as the complete technical details of each representative type of antenna that will operate within the network. Such lead applications for a single system must identify:

* * * * *

(c)(3) Networks of earth stations operating in the 18.3–18.8 GHz, 19.7–20.2 GHz, 28.35–28.6 GHz, and 29.25–30 GHz bands with U.S.-licensed or non-U.S.-licensed satellites for domestic or international services.

(i) Applications to license networks of earth stations that will transmit digitally modulated signals to GSO space stations in the 28.35–28.6 GHz and/or 29.25–30.0 GHz bands under blanket operating authority must be filed on FCC Form 312, or Form 312EZ if available, with a Schedule B for each large (5 meters or larger) hub station antenna and each representative type of small antenna (less than 5 meters) operating within the network and may be routinely processed if the criteria in paragraphs (c)(3)(i)(A) and (B) of this section are met:

(A) The applicant certifies pursuant to § 25.132(a)(1) that the off-axis gain of transmitting antennas in the network will not exceed the relevant levels specified in § 25.209(a) and (b) and the power spectral density of any digitally modulated carrier into any transmitting earth station antenna in the proposed network will not exceed 3.5 dBW/MHz as specified in § 25.212(e).

(B) The application includes information filed pursuant to paragraph (g)(1) of this section indicating that off-axis EIRP density from the proposed earth stations will not exceed relevant routine levels specified in § 25.138(a).

(ii) Applications to license networks of earth stations operating in the 28.35–28.6 GHz and/or 29.25–30.0 GHz bands under blanket operating authority that do not meet the requirements of §§ 25.212(e) or 25.138(a) must comply with the requirements in § 25.220 and must be filed on FCC Form 312 with a Schedule B for each large (5 meters or larger) hub station antenna and each representative type of small antenna (less than 5 meters) operating within the network.

* * * * *

(e) License applications for earth station operation in any portion of the 18.3–20.2 GHz and 28.35–30.0 GHz bands not filed on FCC Form 312EZ pursuant to paragraph (a)(2) of this section must be filed on FCC Form 312, Main Form and Schedule B, and must include any information required by paragraph (g) or (j) of this section or by § 25.130. An applicant may request authority for operation of GSO FSS earth stations in the conventional Ka-band, or for operation of NGSO FSS earth stations in the 18.8–19.3 GHz (space-to-Earth) and 28.6–29.1 (Earth-to-space) bands, without specifying the location of user terminals but must specify the geographic area(s) in which they will operate and the location of hub and/or gateway stations.

(f) * * * Applications for blanket authority to operate transceiver units may be filed using FCC Form 312, Main Form and Schedule B. * * *

(g) Applications for earth stations that will transmit to GSO space stations in any portion of the 5850–6725 MHz, 13.75–14.5 GHz, 24.75–25.25 GHz, 28.35–28.6 GHz, or 29.25–30.0 GHz bands must include, in addition to the particulars of operation identified on FCC Form 312 and associated Schedule B, the information specified in either paragraph (g)(1) or (g)(2) of this section for each earth station antenna type.

(1) Specification of off-axis EIRP density calculated from measurements made consistent with the requirements in § 25.132(b)(1), in accordance with the following requirements. For purposes of this rule, the "off-axis angle" is the angle in degrees from a line between an earth station antenna and the target satellite.

(i) A plot of maximum co-polarized EIRP density in the plane tangent to the GSO arc at off-axis angles from minus 180° to plus 180°;

(ii) A plot of maximum co-polarized EIRP density in the plane tangent to the GSO arc at off-axis angles from minus 10° to plus 10°;

(iii) A plot of maximum co-polarized EIRP density in the plane perpendicular to the GSO arc at off-axis angles from 0° to plus 30°;

(iv) A plot of maximum cross-polarized EIRP density in the plane tangent to the GSO arc at off-axis angles from minus 7° to plus 7°;

(v) A plot of maximum cross-polarized EIRP density in the plane perpendicular to the GSO arc at off-axis angles from minus 7° to plus 7°;

(vi) For antennas for which gain measurements are made pursuant to § 25.132(b)(1)(iv), the EIRP density plots specified in paragraphs (g)(1)(i) through (v) of this section must be provided over the specified angular ranges in two orthogonal planes, one of which is tangent to the GSO arc and with the antenna operating at its maximum skew angle, which the applicant must specify.

(vii) The relevant off-axis EIRP density envelopes in §§ 25.138, 25.218, 25.221, 25.222, 25.223, 25.226, or 25.227 must be superimposed on plots submitted pursuant to paragraphs (g)(1)(i) through (vi) of this section.

(viii) The showing must include a supplemental table for each off-axis angular range in which the relevant EIRP density envelope will be exceeded, specifying angular coordinates in degrees off-axis and corresponding calculated off-axis EIRP density at 0.2° increments over the angular range in which the routine envelope will be exceeded and one degree on each side of that range.

(2) An applicant that certifies pursuant to § 25.132(a)(1) that a proposed antenna's measured gain pattern conforms to relevant standards in § 25.209(a) and (b) and that input power density to the antenna will not exceed the relevant limit in §§ 25.211 or 25.212 need not provide a showing pursuant to paragraph (g)(1) of this section for operation with that antenna.

(h) [Reserved]

(i) An earth station applicant filing an application for a blanket-licensed earth station network made up of FSS earth stations and planning to use a contention protocol must include in its application a certification that its contention protocol usage will be reasonable.

* * * * *

(k)(1) Applicants for FSS earth stations that qualify for routine processing in the conventional or extended C-bands, the conventional or extended Ku-bands, the conventional Ka-band, or the 24.75–25.25 GHz band, including ESV applications filed pursuant to § 25.222(a)(1) or (a)(3), VMES applications filed pursuant to § 25.226(a)(1) or (a)(3), and ESAA applications filed pursuant to § 25.227(a)(1) or (a)(3), may designate the Permitted Space Station List as a point of communication. Once such an application is granted, the earth station operator may communicate with any space station on the Permitted Space Station List, provided that the operation is consistent with the technical parameters and conditions in the earth station license and any limitations placed on the space station authorization or noted in the Permitted Space Station List.

(2) Notwithstanding paragraph (k)(1) of this section, the operator of an earth station that qualifies for routine processing in the conventional Ka-band may not communicate with a space station on the Permitted Space Station List in the 18.3–18.8 GHz or 19.7–20.2 GHz band until the space station operator has completed coordination under Footnote US334 to § 2.106 of this chapter.

■ 12. In § 25.117, add paragraph (h) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(h) Unless otherwise ordered by the Commission, an application for any of the following kinds of modification of the operation of a GSO space station will be deemed granted 35 days after the date of the public notice that the application has been accepted for filing, provided no objection is filed during the 30-day notice period and the application does not propose a change that would be inconsistent with a Commission rule or require modification of the BSS plan in Appendix 30 or the associated feeder-link Plan in Appendix 30A of the ITU Radio Regulations (both incorporated by reference, *see* § 25.108).

(1) Relocation of a DBS or GSO FSS space station by no more than 0.15° from the initially authorized orbital location, provided the application includes a signed certification that:

(i) The space station operator has assessed and limited the probability of the satellite becoming a source of debris as a result of collisions with large debris or other operational satellites at the new orbital location; and

(ii) The proposed station-keeping volume of the satellite following relocation will not overlap a station-keeping volume reasonably expected to be occupied by any other satellite, including those authorized by the Commission, applied for and pending before the Commission, or otherwise the subject of an ITU filing and either in orbit or progressing towards launch.

(2) Repositioning one or more antenna beams by no more than 0.3 angular degrees from a line between the space station and the initially authorized boresight location(s).

■ 13. In § 25.118, revise paragraphs (a), (b), and (e) to read as follows:

§ 25.118 Modifications not requiring prior authorization.

(a) *Earth station modifications, notification required.* Earth station licensees may make the following modifications without prior Commission authorization, provided they notify the Commission, using FCC Form 312 and Schedule B, within 30 days of the modification. The notification must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(1) Blanket-licensed earth station operators may add remote terminals operating on a primary basis without prior authorization, provided they have complied with all applicable frequency coordination procedures in accordance with § 25.251.

(2) A licensee providing service on a private carrier basis may change its operations to common carrier status without obtaining prior Commission authorization. The licensee must notify the Commission using FCC Form 312 within 30 days after the completed change to common carrier status.

(3) An earth station operator may change a point of communication without prior authorization, provided the operator does not repoint the earth station's antenna beyond any coordinated range; and

(i) The change results from a space station relocation described in paragraph (e) of this section, or

(ii) The new point of communication is a replacement GSO space station within ±0.15° of orbital longitude of the same location, with authority to serve the U.S., and the change does not entail any increase in the earth station's EIRP or EIRP density.

(4) Licensees may make other changes to their authorized earth stations without prior authority from the Commission, provided the modification does not involve:

(i) An increase in EIRP or EIRP density (either main lobe or off-axis);

(ii) Additional operating frequencies;

(iii) A change in polarization;

(iv) An increase in antenna height;

(v) Antenna repointing beyond any coordinated range or

(vi) A change from the originally authorized coordinates of more than 1 second in latitude or longitude for stations operating in frequency bands shared with terrestrial systems or more than 10 seconds of latitude or longitude for stations operating in frequency bands not shared with terrestrial systems.

(b) *Earth station modifications, notification not required.* Notwithstanding paragraph (a) of this section, equipment in an authorized earth station may be replaced without prior authorization and without notifying the Commission if the new equipment is electrically identical to the existing equipment.

* * * * *

(e) *Relocation of GSO space stations.* A space station licensee may relocate a GSO space station without prior authorization, but upon 30 days prior notice to the Commission and any potentially affected licensed spectrum user, provided that the operator meets the following requirements. The notification must be filed electronically on FCC Form 312 through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter:

(1) The space station will be relocated to a position within ±0.15° of an orbital location assigned to the same licensee.

(2) The licensee certifies that the space station will operate after the relocation within the technical parameters authorized and coordinated for the space station previously assigned to that location.

(3) The licensee certifies that it will comply with all the conditions of its license for operation at the changed location.

(4) The licensee certifies that it will limit operations of the space station to tracking, telemetry, and command functions during the relocation and satellite drift transition period.

(5) The licensee certifies that:

(i) It has assessed and limited the probability of the satellite becoming a source of debris as a result of collisions with large debris or other operational satellites at the new orbital location; and

(ii) The proposed station-keeping volume of the satellite following relocation will not overlap a station-keeping volume reasonably expected to be occupied by any other satellite, including those authorized by the Commission, applied for and pending before the Commission, or otherwise the subject of an ITU filing and either in orbit or progressing towards launch.

(6) The licensee certifies that the relocation will not result in a lapse of service for any current customer.

(7) If the space station to be relocated is a DBS space station, the licensee certifies that there will be no increase in interference due to the operations of the relocated space station that would require the Commission to submit a proposed modification to the ITU Appendix 30 Broadcasting-Satellite Service Plan and/or the Appendix 30A feeder-link Plan (both incorporated by reference, *see* § 25.108) to the ITU Radiocommunication Bureau. A DBS licensee that meets this certification requirement is not subject to the requirements in paragraph (e)(2) of this section.

(8) If the space station to be relocated is a DBS space station, the licensee certifies that it will meet the geographic service requirements in § 25.148(c) after the relocation.

* * * * *

■ 14. In § 25.119, revise paragraph (a) and add paragraphs (h), (i), and (j) to read as follows:

§ 25.119 Assignment or transfer of control of station authorization.

(a) You must file an application for Commission authorization before you can transfer, assign, dispose of (voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation or any other entity) your construction permit or station license, or accompanying rights, except as provided in paragraph (h) of this section. The Commission will grant your application only if it finds that doing so will serve the public interest, convenience, and necessity.

* * * * *

(h) *Pro forma transactions involving a telecommunications carrier.* You do not need prior Commission approval for a non-substantial (*pro forma*) transfer of control or assignment of license involving a telecommunications carrier, as defined in 47 U.S.C. 153(51). However, the *pro forma* transferee or assignee must file a notification with the Commission no later than 30 days after the transfer or assignment is completed. The notification must be filed on FCC Form 312, Main Form and Schedule A and must contain a certification that the transfer of control or assignment was *pro forma* and that, together with all previous *pro forma* transactions, it did not result in a change in the actual controlling party.

(i) *Pro forma transactions not involving a telecommunications carrier.* A complete application for Commission approval of a non-substantial (*pro forma*) transfer of control or assignment of license not involving a telecommunications carrier, as defined in 47 U.S.C. 153(51), will be deemed granted one business day after filing, provided that:

(1) Approval does not require a waiver of, or a declaratory ruling pertaining to, any applicable Commission rule; and

(2) The application includes a certification that the proposed transfer of control or assignment is *pro forma* and that, together with all previous *pro forma* transactions, it would not result in a change in the actual controlling party.

(j) *Receive-only earth station registrations.* You do not need prior Commission approval for a transfer of control or assignment of a receive-only earth station registration. For all such transactions other than non-substantial (*pro forma*) transfers of control, the transferee or assignee must file a notification with the Commission on FCC Form 312, Main Form and Schedule A no later than 30 days after the transfer or assignment is completed. No notification is required for a *pro forma* transfer of control of a receive-only earth station registrant.

■ 15. In § 25.129, revise paragraph (c) to read as follows:

§ 25.129 Equipment authorization for portable earth-station transceivers.

* * * * *

(c) In addition to the information required by §§ 1.1307(b) and 2.1033(c) of this chapter, applicants for certification required by this section must submit any additional equipment test data necessary to demonstrate compliance with pertinent standards for transmitter performance prescribed in §§ 25.138, 25.202(f), and 25.216, must submit the statements required by § 2.1093(c) of this chapter, and must demonstrate compliance with the labeling requirement in § 25.285(b).

* * * * *

■ 16. In § 25.130, revise paragraph (b), (g) introductory text, and the note to paragraph (g) to read as follows:

§ 25.130 Filing requirements for transmitting earth stations.

* * * * *

(b) A frequency coordination analysis in accordance with § 25.203(b) must be provided for earth stations transmitting in the frequency bands shared with equal rights between terrestrial and space services, except applications for user transceiver units associated with the NVNG MSS, which must instead provide the information required by § 25.135, and applications for 1.6/2.4 GHz MSS user transceivers, which must demonstrate that the transceivers will operate in compliance with relevant requirements in § 25.213. Also, applications for transmitting earth stations must include any notification or demonstration required by any other relevant provision in § 25.203.

* * * * *

(g) Parties may apply, either in an initial application or an application for modification of license, for operating authority for multiple transmitting FSS earth stations that are not eligible for blanket or network licensing under another section of this part in the following circumstances:

* * * * *

Note to paragraph (g): This paragraph does not apply to applications for blanket-licensed earth station networks filed pursuant to §§ 25.115(c) or 25.218; applications for conventional Ka-band hub stations filed pursuant to § 25.115(e); applications for NGSO FSS gateway earth stations filed pursuant to § 25.115(f); applications filed pursuant to §§ 25.221, 25.222, 25.226, or 25.227; or applications for 29 GHz NGSO MSS feeder-link stations in a complex as defined in § 25.257.

■ 17. In § 25.131, revise paragraphs (b) and (j)(2) to read as follows:

§ 25.131 Filing requirements and registration for receive-only earth stations.

* * * * *

(b) Receive-only earth stations in the FSS that operate with U.S.-licensed space stations, or with non-U.S.-licensed space stations that have been duly approved for U.S. market access, may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the Fixed Service in accordance with the procedures of §§ 25.203 and 25.251, subject to the stricture in § 25.209(c).

* * * * *

(j) * * *

(2) Operators of receive-only earth stations need not apply for a license to receive transmissions from non-U.S.-licensed space stations that have been duly approved for U.S. market access, provided the space station operator and earth station operator comply with all applicable rules in this chapter and with applicable conditions in the Permitted Space Station List or market-access grant.

■ 18. In § 25.132, revise the section heading and paragraphs (a) and (b) to read as follows:

§ 25.132 Verification of earth station antenna performance.

(a)(1) Except as provided in paragraph (a)(2) of this section, applications for transmitting earth stations in the FSS, including feeder-link stations, must include a certification that the applicant has reviewed the results of a series of radiation pattern tests performed by the antenna manufacturer on representative equipment in representative configurations, and the test results demonstrate that the equipment meets relevant off-axis gain standards in § 25.209, measured in accordance with paragraph (b)(1) of this section. Applicants and licensees must be prepared to submit the radiation pattern measurements to the Commission on request.

(2) Applicants that specify off-axis EIRP density pursuant to § 25.115(g)(1) are exempt from the certification requirement in paragraph (a)(1) of this section.

(b)(1) For purposes of paragraph (a)(1) of this section and § 25.115(g)(1), the following measurements on a production antenna performed on calibrated antenna range must be made at the top and bottom of each frequency band assigned for uplink transmission:

(i)(A) Co-polarized gain in the azimuth plane must be measured across a range extending to 180° on each side of the main-lobe axis, and the measurements must be represented in two plots: one across the entire angular range of ±180° from the main-lobe axis and the other across ±10° from the main-lobe axis.

(B) Co-polarized gain must be measured from 0° to 30° from beam peak in the elevation plane.

(ii) Cross-polarization gain must be measured across a range of plus and minus 7° from beam peak in the azimuth and elevation planes.

(iii) Main beam gain.

(iv) For antennas with asymmetric apertures or beams, where the minor axis of the antenna beam (major axis of the antenna aperture) will not always be aligned parallel to the plane tangent to the GSO arc, the measurements in paragraphs (b)(1)(i) through (iii) of this section must be made over the angular ranges specified in paragraphs (b)(1)(i)(A) and (B) of this section in two orthogonal planes, with the antenna oriented at the maximum skew angle at which it will operate.

(2) The relevant envelope specified in § 25.209 must be superimposed on each measured pattern.

* * * * *

■ 19. In § 25.133, revise paragraphs (a)(2), (b)(1)(v) and (vi), and (b)(2) to read as follows and remove and reserve paragraph (c):

§ 25.133 Period of construction; certification of commencement of operation.

(a) * * *

(2) Operation of a network of earth stations at unspecified locations under an initial blanket license must commence within 12 months from the date of the license grant unless the Commission orders otherwise.

(b)(1) * * *

(v) A certification that the facility as authorized has been completed and that each antenna has been tested and found to perform within authorized gain patterns or off-axis EIRP density levels; and

(vi) The date when the earth station became operational.

* * * * *

(2) For FSS earth stations authorized under a blanket license, the licensee must notify the Commission when the earth station network commences operation. The notification should include the information described in paragraphs (b)(1)(i) through (iv) of this section and a certification that each hub antenna, and a type of antenna used in remote stations in the network, has been tested and found to perform within authorized gain patterns or off-axis EIRP density levels. For any type of antenna whose performance was not certified when the network commenced operation, the licensee must submit the information and certification stated above for the antenna type when it is first deployed.

(c) [Reserved]

* * * * *

§ 25.134 [Removed and Reserved]

■ 20. Remove and reserve § 25.134.

■ 21. In § 25.137, revise the section heading, paragraph (a) introductory text, paragraph (d) introductory text, and paragraphs (d)(4), (d)(5), (e), and (f) to read as follows:

§ 25.137 Requests for U.S. market access through non-U.S.-licensed space stations.

(a) Earth station applicants requesting authority to communicate with a non-U.S.-licensed space station and entities filing a petition for declaratory ruling to access the United States market using a non-U.S.-licensed space station must attach an exhibit with their FCC Form 312 demonstrating that U.S.-licensed satellite systems have effective competitive opportunities to provide analogous services in:

* * * * *

(d) Earth station applicants requesting authority to communicate with a non-U.S.-licensed space station and entities filing a petition for declaratory ruling to access the United States market must demonstrate that the non-U.S.-licensed space station has complied with all applicable Commission requirements for non-U.S.-licensed systems to operate in the United States, including but not limited to the following:

* * * * *

(4) The surety bond requirement in § 25.165, for non-U.S.-licensed space stations that are not in orbit and operating.

(5) Recipients of U.S. market access for NGSO-like satellite operation that have one market access request on file with the Commission in a particular frequency band, or one granted market access request for an unbuilt NGSO-like system in a particular frequency band, will not be permitted to request access to the U.S. market through another NGSO-like system in that frequency band.

(e) An entity requesting access to the United States market through a non-U.S.-licensed space station pursuant to a petition for declaratory ruling may amend its request by submitting an additional petition for declaratory ruling. Such additional petitions will be treated on the same basis as amendments filed by U.S. space station applicants for purposes of determining the order in which the petitions will be considered relative to pending applications and petitions.

(f) A non-U.S.-licensed space station operator that has been granted access to the United States market pursuant to a declaratory ruling may modify its U.S. operations under the procedures set forth in §§ 25.117(d) and (h) and 25.118(e).

* * * * *

■ 22. In § 25.138, revise the section heading, paragraph (a) introductory text, and paragraphs (a)(1) through (a)(4); add paragraph (a)(5) and revise paragraph (b); remove and reserve paragraphs (c), (d), and (e); and remove paragraph (g) to read as follows:

§ 25.138 Licensing requirements for GSO FSS earth stations in the conventional Ka-band.

(a) Applications for earth station licenses in the GSO FSS in the conventional Ka-band that indicate that the following requirements will be met and include the information required by relevant provisions in §§ 25.115 and 25.130 may be routinely processed:

(1) The EIRP density of co-polarized signals in the plane tangent to the GSO arc, as defined in § 25.103, will not exceed the following values under clear sky conditions:

$32.5-25\log(\theta)$	dBW/MHz	for $2.0^\circ \leq \theta \leq 7^\circ$.
11.5	dBW/MHz	for $7^\circ \leq \theta \leq 9.2^\circ$
$35.5-25\log(\theta)$	dBW/MHz	for $9.2^\circ \leq \theta \leq 19.1^\circ$
3.5	dBW/MHz	for $19.1^\circ < \theta \leq 180^\circ$

Where:

θ is the angle in degrees from a line from the earth station antenna to the assigned orbital location of the target satellite.

(2) In the plane perpendicular to the GSO arc, as defined in § 25.103, the EIRP density of co-polarized signals will not exceed the following values under clear sky conditions:

$35.5-25\log(\theta)$	dBW/MHz	for $3.5^\circ \leq \theta \leq 7^\circ$
14.4	dBW/MHz	for $7^\circ < \theta \leq 9.2^\circ$
$38.5-25\log(\theta)$	dBW/MHz	for $9.2^\circ < \theta \leq 19.1^\circ$
6.5	dBW/MHz	for $19.1^\circ < \theta \leq 180^\circ$

Where θ is as defined in paragraph (a)(1) of this section.

(3) The EIRP density levels specified in paragraphs (a)(1) and (2) of this section may be exceeded by up to 3 dB, for values of $\theta > 7^\circ$, over 10% of the range of theta (θ) angles from 7–180° on each side of the line from the earth station to the target satellite.

(4) The EIRP density of cross-polarized signals will not exceed the following values in the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc under clear sky conditions:

22.5–25log(θ)	dBW/MHz	for 2.0° < θ ≤ 7.0°

Where θ is as defined in paragraph (a)(1) of this section.

(5) A license application for earth station operation in a network using variable power density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite receiving beam may be routinely processed if the applicant certifies that the aggregate off-axis EIRP density from all co-frequency earth stations transmitting simultaneously to the same target satellite receiving beam, not resulting from colliding data bursts transmitted pursuant to a contention protocol, will not exceed the off-axis EIRP density limits permissible for a single earth station, as specified in paragraphs (a)(1) through (a)(4) of this section.

* * * * *

(b) Operation with off-axis EIRP density exceeding a relevant envelope specified in paragraph (a) of this section and applications proposing such operation are subject to coordination requirements in § 25.220.

(c)–(e) [Reserved]

* * * * *

■ 23. In § 25.140, revise the section heading and paragraphs (a) and (b)(3), and add paragraph (d) to read as follows:

§ 25.140 Further requirements for license applications for GSO space station operation in the FSS and the 17/24 GHz BSS.

(a)(1) In addition to the information required by § 25.114, an applicant for GSO FSS space station operation involving transmission of analog video signals must certify that the proposed analog video operation has been coordinated with operators of authorized co-frequency space stations within six degrees of the requested orbital location.

(2) In addition to the information required by § 25.114, an applicant for GSO FSS space station operation at an orbital location less than two degrees from the assigned location of an authorized co-frequency GSO space station must either certify that the proposed operation has been coordinated with the operator of the co-frequency space station or submit an interference analysis demonstrating the compatibility of the proposed system with the co-frequency space station. Such an analysis must include, for each type of radio frequency carrier, the link noise budget, modulation parameters, and overall link performance analysis. (See Appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service, FCC 83–184, and the following public notices, copies of which are available in the Commission's EDOCS database: DA 03–3863 and DA 04–1708.) The provisions in this paragraph do not apply to proposed analog video operation, which is subject to the requirement in paragraph (a)(1) of this section.

(3) In addition to the information required by § 25.114, an applicant for a GSO FSS space station must provide the following for operation other than analog video operation:

(i) With respect to proposed operation in the conventional or extended C-bands, a certification that downlink EIRP density will not exceed 3 dBW/4kHz for digital transmissions or 8 dBW/4kHz for analog transmissions and that associated uplink operation will not exceed applicable EIRP density envelopes in §§ 25.218 or 25.221(a)(1) unless the non-routine uplink and/or downlink operation is coordinated with operators of authorized co-frequency space stations at assigned locations within six degrees of the orbital location of the proposed space station and except as provided in paragraph (d) of this section.

(ii) With respect to proposed operation in the conventional or extended Ku-bands, a certification that downlink EIRP density will not exceed 14 dBW/4kHz for digital transmissions or 17 dBW/4kHz for analog transmissions and that associated uplink operation will not exceed applicable EIRP density envelopes in §§ 25.218, 25.222(a)(1), 25.226(a)(1), or 25.227(a)(1) unless the non-routine uplink and/or downlink operation is coordinated with operators of authorized co-frequency space stations at assigned locations within six degrees of the orbital location of the proposed space station and except as provided in paragraph (d) of this section.

(iii) With respect to proposed operation in the conventional Ka-band, a certification that the proposed space station will not generate power flux-density at the Earth's surface in excess of -118 dBW/m^2/MHz and that associated uplink operation will not exceed applicable EIRP density envelopes in § 25.138(a) unless the non-routine uplink and/or downlink operation is coordinated with operators of authorized co-frequency space stations at assigned locations within six degrees of the orbital location and except as provided in paragraph (d) of this section.

(iv) With respect to proposed operation in the 4500–4800 MHz (space-to-Earth), 6725–7025 MHz (Earth-to-space), 10.70–10.95 GHz (space-to-Earth), 11.20–11.45 GHz (space-to-Earth), and/or 12.75–13.25 GHz (Earth-to-space) bands, a statement that the proposed operation will take into account the applicable requirements of Appendix 30B of the ITU Radio Regulations (incorporated by reference, *see* § 25.108) and a demonstration that it is compatible with other U.S. ITU filings under Appendix 30B.

(v) With respect to proposed operation in other FSS bands, an interference analysis demonstrating compatibility with any previously authorized co-frequency space station at a location two degrees away or a certification that the proposed operation has been coordinated with the operator(s) of the previously authorized space station(s). If there is no previously authorized space station at a location two degrees away, the applicant must submit an interference analysis demonstrating compatibility with a hypothetical co-frequency space station two degrees away with the same receiving and transmitting characteristics as the proposed space station.

(b) * * *

(3) Except as described in paragraph (b)(5) of this section, an applicant for a license to operate a 17/24 GHz BSS space station that will be located precisely at one of the 17/24 GHz BSS orbital locations specified in Appendix F of the Report and Order adopted May 2, 2007, IB Docket No. 06–123, FCC 07–76, must certify that the downlink power flux density on the Earth's surface will not exceed the values specified in § 25.208(w), and that the associated feeder-link earth station transmissions will not exceed the EIRP density limits in § 25.223(c) unless the non-conforming uplink operation is coordinated with other affected 17/24 GHz BSS systems in accordance with § 25.223(c).

* * * * *

(d) An operator of a GSO FSS space station in the conventional or extended C-bands, conventional or extended Ku-bands, or conventional Ka-band may notify the Commission of its non-routine transmission levels and be relieved of the obligation to coordinate such levels with later applicants and petitioners.

(1) The letter notification must include the downlink off-axis EIRP density levels or power flux density levels and/or uplink off-axis EIRP density levels, specified per frequency range and space station antenna beam, that exceed the relevant routine limits set forth in paragraphs (a)(3)(i) through (iii) of this section and §§ 25.138(a), 25.218, 25.221(a)(1), 25.222(a)(1), 25.226(a)(1), or 25.227(a)(1).

(2) The notification will be placed on public notice pursuant to § 25.151(a)(11).

(3) Non-routine transmissions notified pursuant to this paragraph (d) need not be coordinated with operators of authorized co-frequency space stations that filed their complete applications or petitions after the date of filing of the notification with the Commission. Such later applicants and petitioners must accept any additional interference caused by the notified non-routine transmissions.

(4) An operator of a replacement space station, as defined in § 25.165(e), may operate with non-routine transmission levels to the extent permitted under paragraph (d)(3) of this section for the replaced space station.

* * * * *

§ 25.142 [Amended]

■ 24. In § 25.142, remove paragraph (a)(5).

■ 25. In § 25.143, revise paragraph (a) and the introductory text of paragraph (b)(2), remove paragraphs (b)(3), (c), (e), and (g), redesignate paragraph (f) as paragraph (c), and redesignate paragraph (h) as paragraph (d).

§ 25.143 Licensing provisions for the 1.6/2.4 GHz Mobile-Satellite Service and 2 GHz Mobile-Satellite Service.

(a) Authority to launch and operate a constellation of NGSO satellites will be granted in a single blanket license for operation of a specified number of space stations in specified orbital planes. An individual license will be issued for each GSO satellite, whether it is to be operated in a GSO-only system or in a GSO/NGSO hybrid system.

(b) * * *

(2) *Technical qualifications.* In addition to providing the information specified in paragraph (b)(1) of this section, each applicant and petitioner must demonstrate the following:

* * * * *

■ 26. In § 25.145, revise the section heading and paragraph (e) to read as follows and remove paragraphs (f), (g), and (h).

§ 25.145 Licensing provisions for the FSS in the 18.3–20.2 GHz and 28.35–30.0 GHz bands.

* * * * *

(e) *Prohibition of certain agreements.* No license shall be granted to any applicant for a space station in the FSS operating in portions of the 18.3–20.2 GHz and 28.35–30.0 GHz bands if that applicant, or any persons or companies controlling or controlled by the applicant, shall acquire or enjoy any right, for the purpose of handling traffic to or from the United States, its territories or possessions, to construct or operate space segment or earth stations, or to interchange traffic, which is denied to any other United States company by reason of any concession, contract, understanding, or working arrangement to which the Licensee or any persons or companies controlling or controlled by the Licensee are parties.

* * * * *

■ 27. In § 25.146, revise the section heading, the second sentence in paragraph (a)(1)(i), the heading of paragraph (a)(2), and remove paragraph (m).

§ 25.146 Licensing and operating rules for the NGSO FSS in the 10.7–14.5 GHz bands.

(a) * * *

(1)(i) * * * The PFD masks shall be generated in accordance with the specification stipulated in the most recent version of ITU–R S.1503–2 (incorporated by reference, *see* § 25.108). * * *

* * * * *

(2) *Single-entry additional operational equivalent power flux-density, in the Earth-to-space direction, (additional operational* $EPFD_{up}$*) limits.* * * *

* * * * *

§ 25.147 [Removed and Reserved]

■ 28. Remove and reserve § 25.147.

■ 29. In § 25.151, revise the section heading and paragraphs (a)(1), (a)(7), and (a)(8) and add paragraphs (a)(9) through (a)(11) to read as follows:

§ 25.151 Public notice.

(a) * * *

(1) The receipt of applications for new station authorizations, except applications for space station licenses filed pursuant to § 25.110(b)(3)(i) or (ii) of this part;

* * * * *

(7) Information that the Commission in its discretion believes to be of public significance;

(8) Special environmental considerations as required by part 1 of this chapter;

(9) Submission of Coordination Requests and Appendix 30B filings to the ITU in response to requests filed pursuant to § 25.110(b)(3)(i) and (b)(3)(ii);

(10) The receipt of space station application information filed pursuant to § 25.110(b)(3)(iii); and

(11) The receipt of notifications of non-routine transmission filed pursuant to § 25.140(d).

* * * * *

§ 25.152 [Removed and Reserved]

■ 30. Remove and reserve § 25.152.

■ 31. In § 25.155, remove the word "electrical" in paragraph (a) and revise paragraphs (b) and (c) to read as follows:

§ 25.155 Mutually exclusive applications.

* * * * *

(b) A license application for NGSO-like satellite operation, as defined in § 25.157(a), will be entitled to comparative consideration with one or more mutually exclusive applications only if the application is received by the Commission in a condition acceptable for filing by the "cut-off" date specified in a public notice.

(c) A license application for GSO-like satellite operation, as defined in § 25.158(a)(1), will be entitled to comparative consideration with another application only if:

(1) The application is mutually exclusive with another application for GSO-like operation; and

(2) The application is received by the Commission in a condition acceptable for filing at the same millisecond as the other application.

■ 32. In § 25.156, remove and reserve paragraph (b) and revise paragraphs (d)(1) through (d)(5) to read as follows:

§ 25.156 Consideration of applications.

* * * * *

(b) [Reserved]

* * * * *

(d)(1) Applications for NGSO-like satellite operation will be considered pursuant to the procedures set forth in § 25.157, except as provided in § 25.157(b).

(2) Applications for GSO-like satellite operation will be considered pursuant to the procedures set forth in § 25.158, except as provided in § 25.158(a)(2).

(3) Applications for both NGSO-like satellite operation and GSO-like satellite operation in two or more service bands will be treated as separate applications for each service band, and each service band request will be considered pursuant to §§ 25.157 or 25.158, as appropriate.

(4) Applications for feeder-link authority or inter-satellite link authority will be treated like an application

separate from its associated service band. Each feeder-link request or inter-satellite link request will be considered pursuant to the procedure for applications for GSO-like operation or NGSO-like operation, as applicable.

(5) In cases where the Commission has not adopted frequency-band specific service rules, the Commission will not consider applications for NGSO-like satellite operation after it has granted an application for GSO-like operation in the same frequency band, and it will not consider applications for GSO-like operation after it has granted an application for NGSO-like operation in the same band, unless and until the Commission establishes NGSO/GSO sharing criteria for that frequency band. In the event that the Commission receives applications for NGSO-like operation and applications for GSO-like operation at the same time, and the Commission has not adopted sharing criteria in that band, the Commission will divide the spectrum between GSO-like and NGSO-like licensees based on the proportion of qualified GSO-like and NGSO-like applicants.

* * * * *

■ 33. In § 25.157, revise the section heading, paragraphs (a), (b), (c) introductory text, (g)(1), and the last sentence in paragraph (g)(2) to read as follows:

§ 25.157 Consideration of applications for NGSO-like satellite operation.

(a) This section specifies the procedures for considering license applications for "NGSO-like" satellite operation, except as provided in paragraph (b) of this section. For purposes of this section, the term "NGSO-like satellite operation" means:

(1) Operation of any NGSO satellite system, and

(2) Operation of a GSO MSS satellite to communicate with earth stations with non-directional antennas.

(b) The procedures prescribed in this section do not apply to an application for authority to launch and operate a replacement space station, or stations, that meet the relevant criteria in § 25.165(e)(1) and (e)(2) and that will be launched before the space station(s) to be replaced are, or is, retired from service or within a reasonable time after loss of a space station during launch or due to premature failure in orbit.

(c) Each application for NGSO-like satellite operation that is acceptable for filing under § 25.112, except replacement applications described in paragraph (b) of this section, will be reviewed to determine whether it is a "competing application," *i.e.*, filed in response to a public notice initiating a processing round, or a "lead application," *i.e.*, all other applications for NGSO-like satellite operation.

* * * * *

(g)(1) In the event that a license granted in a processing round pursuant to this section is cancelled for any reason, the Commission will redistribute the bandwidth allocated to that applicant equally among the remaining applicants whose licenses were granted concurrently with the cancelled license, unless the Commission determines that such a redistribution would not result in a sufficient number of licensees remaining to make reasonably efficient use of the frequency band.

(2) * * * Parties already holding licenses for NGSO-like satellite operation in that frequency band will not be permitted to participate in that processing round.

* * * * *

■ 34. In § 25.158, revise the section heading, paragraphs (a), (b) introductory text, (b)(2), (c), and (d) introductory text to read as follows:

§ 25.158 Consideration of applications for GSO-like satellite operation.

(a)(1) This section specifies the procedures for considering license applications for "GSO-like" satellite operation, except as provided in paragraph (a)(2) of this section. For purposes of this section, the term "GSO-like satellite operation" means operation of a GSO satellite to communicate with earth stations with directional antennas, including operation of GSO satellites to provide MSS feeder links.

(2) The procedures prescribed in this section do not apply to an application for authority to launch and operate a replacement space station that meets the relevant criteria in § 25.165(e)(1) and (e)(2) and that will be launched before the space station to be replaced is retired from service or within a reasonable time after loss of a space station during launch or due to premature failure in orbit.

(b) Except as provided in paragraph (a)(2) of this section, license applications for GSO-like satellite operation, including first-step filings pursuant to § 25.110(b)(3)(i) or (ii), will be placed in a queue and considered in the order that they are filed, pursuant to the following procedure:

* * * * *

(2) If the application is acceptable for filing under § 25.112, the application will be placed on public notice pursuant to § 25.151.

(i) For applications filed pursuant to § 25.110(b)(3)(i) or (b)(3)(ii), the public notice will announce that the Coordination Request or Appendix 30B filing has been submitted to the ITU. When further information is filed pursuant to § 25.110(b)(3)(iii), it will be reviewed to determine whether it is substantially complete within the meaning of § 25.112. If so, a second public notice will be issued pursuant to § 25.151 to give interested parties an opportunity to file pleadings pursuant to § 25.154.

(ii) For any other license application for GSO-like satellite operation, the public notice will announce that the application has been found acceptable for filing and will give interested parties an opportunity to file pleadings pursuant to § 25.154.

* * * * *

(c) A license applicant for GSO-like satellite operation must not transfer, assign, or otherwise permit any other entity to assume its place in any queue.

(d) In the event that two or more applications for GSO-like satellite operation are mutually exclusive within the meaning of § 25.155(c), the Commission will consider those applications pursuant to the following procedure:

* * * * *

§ 25.159 [Amended]

■ 35. In § 25.159, remove and reserve paragraph (a).

■ 36. In § 25.163, revise paragraph (a)(3) to read as follows:

§ 25.163 Reinstatement.

(a) * * *

(3) The petition sets forth with specificity the procedures that have been established to ensure timely filings in the future.

* * * * *

■ 37. In § 25.164, revise paragraphs (a) and (b), remove and reserve paragraphs (c) through (e), and revise paragraphs (f) and (g) to read as follows:

§ 25.164 Milestones.

(a) The recipient of an initial license for a GSO space station, other than a DBS or SDARS space station, granted on or after August 27, 2003, must launch the space station, position it in its assigned orbital location, and operate it in accordance with the station authorization no later than five years after the grant of the license, unless a different schedule is established by Title 47, Chapter I, or the Commission.

(b) The recipient of an initial license for an NGSO satellite system, other than a DBS or SDARS satellite system, granted on or after September 11, 2003, must launch the space stations, place them in the assigned orbits, and operate them in accordance with the station authorization no later than six years after the grant of the license, unless a different schedule is established by Title 47, Chapter I, or the Commission.

(c)–(e) [Reserved]

(f) A licensee subject to the requirements in paragraph (a) or (b) of this section must either demonstrate compliance with the applicable requirement or notify the Commission in writing that the requirement was not met, within 15 days after the specified deadline. Compliance with a milestone requirement in paragraph (a) or (b) of this section may be demonstrated by certifying pursuant to § 25.121(d) that the space station(s) in question, has, or have, been launched and placed in the authorized orbital location or non-geostationary orbit(s) and that in-orbit operation of the space station or stations has been tested and found to be consistent with the terms of the authorization.

(g) Licensees of satellite systems that include both NGSO satellites and GSO satellites, other than DBS and SDARS satellite systems, must meet the requirement in paragraph (a) of this section with respect to the GSO satellite(s) and the requirement in paragraph (b) of this section with respect to the NGSO satellites.

* * * * *

■ 38. In § 25.165, revise the section heading, the first sentence in paragraph (a) introductory text, and paragraphs (a)(1) through (a)(3), (c), and (e), remove and reserve paragraph (d), and add paragraphs (f) and (g) to read as follows:

§ 25.165 Surety bonds.

(a) For all space station licenses issued after September 20, 2004, other than licenses for DBS space stations, SDARS space stations, and replacement space stations as defined in paragraph (e) of this section, the licensee must post a bond within 30 days of the grant of its license. * * *

(1) An NGSO licensee must have on file a surety bond requiring payment in the event of default as defined in paragraph (c) of this section, in an amount, at a minimum, determined according to the following formula, with the resulting dollar amount rounded to the nearest $10,000: A = $1,000,000 + $4,000,000 * D/2192, where A is the amount to be paid and D is the lesser of 2192 or the number of days that elapsed from the date of license grant until the date when the license was surrendered.

(2) A GSO licensee must have on file a surety bond requiring payment in the event of default as defined in paragraph (c) of this section, in an amount, at a minimum, determined according to the following formula, with the resulting dollar amount rounded to the nearest $10,000: A = $1,000,000 + $2,000,000 * D/1827, where A is the amount to be paid and D is the lesser of 1827 or the number of days that elapsed from the date of license grant until the date when the license was surrendered.

(3) Licensees of satellite systems including both NGSO space stations and GSO space stations that will operate in the same frequency bands must file a surety bond requiring payment in the event of default as defined in paragraph (c) of this section, in an amount, at a minimum, to be determined according to the formula in paragraph (a)(1) of this section.

* * * * *

(c) A licensee will be considered to be in default with respect to a bond filed pursuant to paragraph (a) of this section if it surrenders the license before meeting all milestone requirements or if it fails to meet any milestone deadline set forth in § 25.164, and, at the time of milestone deadline, the licensee has not provided a sufficient basis for extending the milestone.

(d) [Reserved]

(e) A replacement space station is one that:

(1) Is authorized to operate at an orbital location within ±0.15° of the assigned location of a GSO space station to be replaced or is authorized for NGSO operation and will replace an existing NGSO space station in its authorized orbit;

(2) Is authorized to operate in the same frequency bands, and with the same coverage area as the space station to be replaced; and

(3) Is scheduled to be launched so that it will be brought into use at approximately the same time as, but no later than, the existing space station is retired.

(f) An applicant that has submitted a Coordination Request pursuant to § 25.110(b)(3)(i) or an Appendix 30B filing pursuant to § 25.110(b)(3)(ii) must obtain a surety bond in the amount of $500,000 in accordance with the requirements in paragraph (b) of this section for licensees. The application will be returned as defective pursuant to § 25.112 if a copy of the required bond is not filed with the Commission within 30 days after release of a public notice announcing that the Commission has submitted the Coordination Request or Appendix 30B filing to the ITU.

(g) An applicant will be considered to be in default with respect to a bond filed pursuant to paragraph (f) of this section if the applicant fails to submit a complete, acceptable license application pursuant to § 25.110(b)(3)(iii) for the operation proposed in the initial application materials filed pursuant to § 25.110(b)(3)(i) or (b)(3)(ii) within two years of the date of submission of the initial application materials.

■ 39. In § 25.202, revise the table and footnotes in paragraph (a)(1) and paragraph (g) to read as follows:

§ 25.202 Frequencies, frequency tolerance, and emission limits.

(a)(1) * * *

Space-to-Earth (GHz)	Earth-to-space (GHz)
3.6–3.65	[6] 5.091–5.25
3.65–3.7	5.85–5.925
3.7–4.2	5.925–6.425
4.5–4.8	6.425–6.525
6.7–7.025 [6]	6.525–6.7
7.025–7.075	6.7–7.025
10.7–11.7 [6]	7.025–7.075
11.7–12.2	12.7–12.75
12.2–12.7	[6] 12.75–13.25
18.3–18.58	13.75–14
18.58–18.8	14–14.2
18.8–19.3	14.2–14.5
19.3–19.7	[6] 15.43–15.63
19.7–20.2	17.3–17.8
37.5–40 [1]	24.75–25.05
40–42	25.05–25.25
	[7] 27.5–28.35
	[2] 28.35–28.6
	[3] 28.6–29.1
	[4] 29.1–29.25
	[5] 29.25–29.5
	[2] 29.5–30.0
	47.2–50.2

[1] Use of this band by the FSS is limited to gateway earth station operations, provided the licensee under this Part obtains a license under part 101 of this chapter or an agreement from a part 101 licensee for the area in which an earth station is to be located. Satellite earth station facilities in this band may not be ubiquitously deployed and may not be used to serve individual consumers.

[2] This band is primary for GSO FSS and secondary for NGSO FSS.

[3] This band is primary for NGSO FSS and secondary for GSO FSS.

[4] This band is primary for NGSO MSS feeder links and LMDS hub-to-subscriber transmission.

[5] This band is primary for NGSO MSS feeder links and GSO FSS.

[6] Use of this band by NGSO FSS systems is limited to transmissions to or from gateway earth stations.

[7] FSS is secondary to LMDS in this band.

* * * * *

(g)(1) Telemetry, tracking, and command signals may be transmitted in frequencies within the assigned bands that are not at a band edge only if the transmissions cause no greater interference and require no greater protection from harmful interference than the communications traffic on the satellite network or have been coordinated with operators of authorized co-frequency space stations at orbital locations within six degrees of the assigned orbital location.

(2) Frequencies, polarization, and coding of telemetry, tracking, and command transmissions must be selected to minimize interference into other satellite networks.

* * * * *

■ 40. In § 25.203, add paragraph (c)(6) and revise the first sentence in paragraph (f), paragraph (g)(1), and paragraph (j) to read as follows:

§ 25.203 Choice of sites and frequencies.

* * * * *

(c) * * *

(6) Multiple antennas in an NGSO FSS gateway earth station complex located within an area bounded by one second of latitude and one second of longitude may be regarded as a single earth station for purposes of coordination with terrestrial services.

* * * * *

(f) * * * In order to minimize possible harmful interference at the National Radio Astronomy Observatory site at Green Bank, Pocahontas County, W. Va., and at the Naval Radio Research Observatory site at Sugar Grove, Pendleton County, W. Va., any applicant for operating authority under this part for a new transmit or transmit-receive earth station, other than a mobile or temporary fixed station, within the area bounded by 39°15′ N. on the north, 78°30′ W. on the east, 37°30′ N. on the south and 80°30′ W. on the west or for modification of an existing license for such station to change the station's frequency, power, antenna height or directivity, or location must, when filing the application with the Commission, simultaneously notify the Director, National Radio Astronomy Observatory, P.O. Box No. 2, Green Bank, W. Va. 24944, in writing, of the technical particulars of the proposed station. * * *

(g) * * *

(1) Applicants for authority to operate a new transmitting earth station in the vicinity of an FCC monitoring station or to modify the operation of a transmitting earth station in a way that would increase the field strength produced at such a monitoring station above that previously authorized should consider the possible need to protect the FCC stations from harmful interference. Geographic coordinates of the facilities that require protection are listed in § 0.121(c) of this chapter. Applications for fixed stations that will produce field strength greater than 10 mV/m or power flux density greater than -65.8 dBW/m^2 in the authorized emission bandwidth at any of the referenced coordinates may be examined to determine the extent of possible interference. Depending on the theoretical field strength value and existing root-sum-square or other ambient radio field signal levels at the referenced coordinates, a condition to protect the monitoring station may be included in the station authorization.

* * * * *

(j) Applicants for NGSO 1.6/2.4 GHz Mobile-Satellite Service/Radiodetermination-Satellite Service feeder links in the 17.7–20.2 GHz and 27.5–30.0 GHz bands must coordinate with licensees of FSS and terrestrial-service systems sharing the band to determine geographic protection areas around each NGSO MSS/Radiodetermination-Satellite Service feeder-link earth station.

* * * * *

§ 25.204 [Amended]

■ 41. In § 25.204, remove the last sentence in paragraph (e)(1).

■ 42. Revise § 25.205 to read as follows:

§ 25.205 Minimum antenna elevation angle.

(a) Earth station antennas must not transmit at elevation angles less than five degrees, measured from the horizontal plane to the direction of maximum radiation, in a frequency band shared with terrestrial radio services or in a frequency band with an allocation to space services operating in both the Earth-to-space and space-to-Earth directions. In other bands, earth station antennas must not transmit at elevation angles less than three degrees. In some instances, it may be necessary to specify greater minimum elevation angles because of interference considerations.

(b) ESAAs in aircraft on the ground must not transmit at elevation angles less than three degrees. There is no minimum angle of antenna elevation for ESAAs while airborne.

■ 43. In § 25.209, revise paragraphs (a), (b), (c), (e), (f) and (h) to read as follows:

§ 25.209 Earth station antenna performance standards.

(a) Except as provided in paragraph (f) of this section, the co-polarization gain of any earth station antenna operating in the FSS and transmitting to a GSO satellite, including earth stations providing feeder links for satellite services other than FSS, may not exceed the following limits:

(1) In the plane tangent to the GSO arc, as defined in § 25.103, for earth stations not operating in the conventional Ku-band, the 24.75–25.25 GHz band, or the 28.35–30 GHz band:

$29-25\log_{10}\theta$	dBi	for $1.5^\circ \le \theta \le 7^\circ$.
8	dBi	for $7^\circ < \theta \le 9.2^\circ$.
$32-25\log_{10}\theta$	dBi	for $9.2^\circ < \theta \le 48^\circ$.
-10	dBi	for $48^\circ < \theta \le 180^\circ$.

Where θ is the angle in degrees from a line from the earth station antenna to the assigned orbital location of the target satellite, and dBi refers to dB relative to an isotropic radiator. This envelope may be exceeded by up to 3 dB in 10% of the range of θ angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(2) In the plane tangent to the GSO arc, for earth stations operating in the conventional Ku-band:

$29-25\log_{10}\theta$	dBi	for $1.5^\circ \le \theta \le 7^\circ$.
8	dBi	for $7^\circ < \theta \le 9.2^\circ$.
$32-25\log_{10}\theta$	dBi	for $9.2^\circ < \theta \le 19.1^\circ$.
0	dBi	for $19.1^\circ < \theta \le 180^\circ$.

Where θ and dBi are as defined in paragraph (a)(1) of this section. This envelope may be exceeded by up to 3 dB in 10% of the range of θ angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(3) In the plane tangent to the GSO arc, for earth stations operating in the 24.75–25.25 GHz or 28.35–30 GHz bands:

$29-25\log_{10}\theta$	dBi	for $2^\circ \leq \theta \leq 7^\circ$.
8	dBi	for $7^\circ < \theta \leq 9.2^\circ$.
$32-25\log_{10}\theta$	dBi	for $9.2^\circ < \theta \leq 19.1^\circ$.
0	dBi	for $19.1^\circ < \theta \leq 180^\circ$.

Where θ and dBi are as defined in paragraph (a)(1) of this section. This envelope may be exceeded by up to 3 dB in 10% of the range of θ angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(4) In the plane perpendicular to the GSO arc, as defined in § 25.103, for earth stations not operating in the conventional Ku-band, the 24.75–25.25 GHz band, or the 28.35–30 GHz band:

Outside the main beam, the gain of the antenna shall lie below the envelope defined by:

$32-25\log_{10}\theta$	dBi	for $3^\circ < \theta \leq 48^\circ$.
−10	dBi	for $48^\circ < \theta \leq 180^\circ$.

Where θ and dBi are as defined in paragraph (a)(1) of this section. This envelope may be exceeded by up to 6 dB in 10% of the range of θ angles from ±3–180°, and by up to 6 dB in the region of main reflector spillover energy.

(5) In the plane perpendicular to the GSO arc, for earth stations operating in the conventional Ku-band:

Outside the main beam, the gain of the antenna shall lie below the envelope defined by:

$32-25\log_{10}\theta$	dBi	for $3^\circ < \theta \leq 19.1^\circ$.
0	dBi	for $19.1^\circ < \theta \leq 180^\circ$.

Where θ and dBi are as defined in paragraph (a)(1) of this section. This envelope may be exceeded by up to 6 dB in 10% of the range of θ angles from ±3–180°, and by up to 6 dB in the region of main reflector spillover energy.

(6) In the plane perpendicular to the GSO arc, for earth stations operating in the 24.75–25.25 GHz or 28.35–30 GHz bands:

Outside the main beam, the gain of the antenna shall lie below the envelope defined by:

$32-25\log_{10}\theta$	dBi	for $3.5^\circ < \theta \leq 7^\circ$.
10.9	dBi	for $7^\circ < \theta \leq 9.2^\circ$.
$35-25\log_{10}\theta$	dBi	for $9.2^\circ < \theta \leq 19.1^\circ$.
3	dBi	for $19.1^\circ < \theta \leq 180^\circ$.

Where θ and dBi are as defined in paragraph (a)(1) of this section. This envelope may be exceeded by up to 6 dB in 10% of the range of θ angles from ±3–180°, and by up to 6 dB in the region of main reflector spillover energy.

(b) Except as provided in paragraph (f) of this section, the off-axis cross-polarization gain of any antenna used for transmission from an FSS earth station to a GSO satellite, including earth stations providing feeder links for satellite services other than FSS, may not exceed the following limits:

(1) In the plane tangent to the GSO arc, for earth stations not operating in the 24.75–25.25 GHz or 28.35–30 GHz bands:

$19-25\log_{10}\theta$	dBi	for $1.8^\circ < \theta \leq 7^\circ$.

Where θ and dBi are as defined in paragraph (a)(1) of this section.

(2) In the plane perpendicular to the GSO arc, for earth stations not operating in the 24.75–25.25 GHz or 28.35–30 GHz bands:

$19-25\log_{10}\theta$	dBi	for $3^\circ < \theta \leq 7^\circ$.

Where θ and dBi are as defined in paragraph (a)(1) of this section.

(3) In the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc, for earth stations operating in the 24.75–25.25 GHz or 28.35–30 GHz bands:

$19-25\log_{10}\theta$	dBi	for $2^\circ < \theta \leq 7^\circ$.

Where θ and dBi are as defined in paragraph (a)(1) of this section.

(c)(1) An earth station licensed for operation with an FSS space station or registered for reception of transmissions from such a space station pursuant to

§ 25.131(b) and (d) is not entitled to protection from interference from authorized operation of other stations that would not cause harmful interference to that earth station if it were using an antenna with receive-band gain patterns conforming to the levels specified in paragraphs (a) and (b) of this section.

(2) A 17/24 GHz BSS telemetry earth station is not entitled to protection from harmful interference from authorized space station operation that would not cause harmful interference to that earth station if it were using an antenna with receive-band gain patterns conforming to the levels specified in paragraphs (a) and (b) of this section. Receive-only earth stations in the 17/24 GHz BSS are entitled to protection from harmful interference caused by other space stations to the extent indicated in § 25.224.

* * * * *

(e) An earth station using asymmetrical antennas without skew angle adjustment capability must comply with the gain values specified in paragraph (a)(1) of this section, in the plane orthogonal to the to the main plane of the antenna, or, alternatively, in the plane corresponding to the maximum skew angle experienced at any location at which the earth station may be located.

(f) A GSO FSS earth station with an antenna that does not conform to the applicable standards in paragraphs (a) and (b) of this section will be authorized only if the applicant demonstrates that the antenna will not cause unacceptable interference. This demonstration must comply with the requirements in §§ 25.138, 25.218, 25.220, 25.221, 25.222, 25.223, 25.226, or 25.227, as appropriate.

* * * * *

(h) The gain of any transmitting antenna in a gateway earth station communicating with NGSO FSS satellites in the 10.7–11.7 GHz, 12.75–13.15 GHz, 13.2125–13.25 GHz, 13.8–14.0 GHz, and/or 14.4–14.5 GHz bands must lie below the envelope defined as follows:

$29-25\log_{10}(\theta)$	dBi	for $1^\circ \leq \theta \leq 36^\circ$.
-10	dBi	for $36^\circ \leq \theta \leq 180^\circ$.

Where θ and dBi are as defined in paragraph (a)(1) of this section. This envelope may be exceeded by up to 3 dB in 10% of the range of θ angles from ±7–180°.

■ 44. In § 25.210, remove and reserve paragraph (a) and revise paragraph (i) to read as follows:

§ 25.210 Technical requirements for space stations.

(a) [Reserved]

* * * * *

(i) Space station antennas in the 17/24 GHz BSS must be designed to provide a cross-polarization isolation such that the ratio of the on axis co-polar gain to the cross-polar gain of the antenna in the assigned frequency band shall be at least 25 dB within its primary coverage area.

* * * * *

■ 45. In § 25.211, revise the section heading, remove and reserve paragraph (a) and revise paragraphs (b), (d)(2), (d)(3) and (e) to read as follows:

§ 25.211 Analog video transmissions in the FSS.

(a) [Reserved]

(b) All conventional C-band analog video transmissions must contain an energy dispersal signal at all times with a minimum peak-to-peak bandwidth set at whatever value is necessary to meet the power flux density limits specified in § 25.208(a) and successfully coordinated internationally and accepted by adjacent U.S. satellite operators based on the use of state of the art space and earth station facilities. All transmissions in frequency bands described in § 25.208(b) and (c) must also contain an energy dispersal signal at all times with a minimum peak-to-peak bandwidth set at whatever value is necessary to meet the power flux density limits specified in § 25.208(b) and (c) and successfully coordinated internationally and accepted by adjacent U.S. satellite operators based on the use of state of the art space and earth station facilities.

* * * * *

(d) * * *

(2) For transmission in the 5925–6425 MHz band, the input power into the antenna will not exceed 26.5 dBW; or

(3) For transmission in the 14.0–14.5 GHz band, the input power into the antenna will not exceed 27 dBW.

(e) Applications for authority for analog video uplink transmission in the 5925–6425 MHz or 14.0–14.5 GHz bands that are not eligible for routine processing under paragraph (d) of this section are subject to the requirements of § 25.220.

■ 46. In § 25.212, revise the section heading, paragraphs (c), (d), and (e) and add paragraphs (g) and (h) to read as follows:

§ 25.212 Narrowband analog transmissions and digital transmissions in the GSO FSS.

* * * * *

(c)(1) An earth station that is not subject to licensing under §§ 25.222, 25.226, or 25.227 may be routinely licensed for analog transmissions in the conventional Ku-band or the extended Ku-band with bandwidths up to 200 kHz (or up to 1 MHz for command carriers at the band edge) if the input power spectral density into the antenna will not exceed −8 dBW/4 kHz, and the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna gain performance requirements in § 25.209(a) and (b).

(2) An earth station that is not subject to licensing under §§ 25.222, 25.226, or 25.227 may be routinely licensed for digital transmission, including digital video transmission, in the conventional Ku-band or the extended Ku-band if input power spectral density into the antenna will not exceed −14 dBW/4 kHz and the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna gain performance requirements in § 25.209(a) and (b).

(d) An individual earth station that is not subject to licensing under § 25.221 may be routinely licensed for digital transmission, or for analog transmission with carrier bandwidths up to 200 kHz (or up to 1 MHz for command carriers at the band edge) in the conventional C-band or the extended C-band, if the applicant certifies conformance with relevant antenna performance standards in § 25.209(a) and (b), and power density into the antenna will not exceed +0.5 dBW/4 kHz for analog carriers or −2.7 dBW/4 kHz for digital carriers.

(e) An earth station may be routinely licensed for digital transmission in the 28.35–28.6 GHz and/or 29.25–30.0 GHz bands if the input power spectral density into the antenna will not exceed 3.5 dBW/MHz and the application includes certification pursuant to § 25.132(a)(1) of conformance with the antenna gain performance requirements in § 25.209(a) and (b).

* * * * *

(g) A license application for earth station operation in a network using variable power density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite receiving beam may be routinely processed if the applicant certifies that the aggregate off-axis EIRP density from all co-frequency earth stations transmitting simultaneously to the same target satellite receiving beam, not resulting from colliding data bursts transmitted pursuant to a contention protocol, will not exceed the applicable off-axis EIRP density limits permissible for a single earth station, as specified in §§ 25.218 or 25.138.

(h) Applications for authority for fixed earth station operation in the conventional C-band, the extended C-band, the conventional Ku-band, the extended Ku-band or the conventional Ka-band that do not qualify for routine processing under relevant criteria in this section, §§ 25.211, 25.218, or 25.138, are subject to the requirements in § 25.220.

■ 47. Revise § 25.218 to read as follows:

§ 25.218 Off-axis EIRP density envelopes for FSS earth stations transmitting in certain frequency bands.

(a) This section applies to applications for FSS earth stations transmitting to GSO space stations in the conventional C-band, extended C-band, conventional Ku-band, or extended Ku-band, with the following exceptions:

(1) ESV, VMES, and ESAA applications and

(2) Applications proposing transmission of analog command signals at a band edge with bandwidths greater than 1 MHz or transmission of any other type of analog signal with bandwidths greater than 200 kHz.

(b) Earth station applications subject to this section may be routinely processed if they meet the applicable off-axis EIRP density envelopes set forth in this section.

(c) *Analog earth station operation in the conventional or extended C-bands.*

(1) For co-polarized transmissions in the plane tangent to the GSO arc, as defined in § 25.103:

$29.5-25\log_{10}\theta$	dBW/4 kHz	for $1.5° \le \theta \le 7°$.
8.5	dBW/4 kHz	for $7° < \theta \le 9.2°$.
$32.5-25\log_{10}\theta$	dBW/4 kHz	for $9.2° < \theta \le 48°$.
−9.5	dBW/4 kHz	for $48° < \theta \le 180°$.

Where θ is the angle in degrees from a line from the earth station antenna to the assigned orbital location of the target satellite. The EIRP density levels specified for $\theta > 7°$ may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(2) For co-polarized transmissions in the plane perpendicular to the GSO arc, as defined in § 25.103:

$32.5-25\log_{10}\theta$	dBW/4 kHz	for $3° \le \theta \le 48°$.
−9.5	dBW/4 kHz	for $48° < \theta \le 180°$.

Where θ is as defined in paragraph (c)(1) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(3) For cross-polarized transmissions in the plane tangent to the GSO arc and in the plane perpendicular to the GSO arc:

$19.5-25\log_{10}\theta$	dBW/4 kHz	for $1.5° \le \theta \le 7°$.

Where θ is as defined in paragraph (c)(1) of this section.

(d) *Digital earth station operation in the conventional or extended C-bands.*

(1) For co-polarized transmissions in the plane tangent to the GSO arc:

$26.3-25\log_{10}\theta$	dBW/4 kHz	for $1.5° \le \theta \le 7°$.
5.3	dBW/4 kHz	for $7° < \theta \le 9.2°$.
$29.3-25\log_{10}\theta$	dBW/4 kHz	for $9.2° < \theta \le 48°$.
−12.7	dBW/4 kHz	for $48° < \theta \le 180°$.

Where θ is as defined in paragraph (c)(1) of this section. The EIRP density levels specified for $\theta > 7°$ may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(2) For co-polarized transmissions in the plane perpendicular to the GSO arc:

$29.3-25\log_{10}\theta$	dBW/4 kHz	for $3° \le \theta \le 48°$.
−12.7	dBW/4 kHz	for $48° < \theta \le 180°$.

Where θ is as defined in paragraph (c)(1) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(3) For cross-polarized transmissions in the plane tangent to the GSO arc and in the plane perpendicular to the GSO arc:

$16.3-25\log_{10}\theta$	dBW/4 kHz	for $1.5° \le \theta \le 7°$.

Where θ is as defined in paragraph (c)(1) of this section.

(4) A license application for earth station operation in a network using variable power density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite receiving beam may be routinely processed if the applicant certifies that the aggregate off-axis EIRP density from all co-frequency earth stations transmitting simultaneously to the same target satellite receiving beam, not resulting from colliding data bursts transmitted pursuant to a contention protocol, will not exceed the off-axis EIRP density limits permissible for a single earth station, as specified in paragraphs (d)(1) through (d)(3) of this section.

(e) *Analog earth station operation in the conventional Ku-band.*

(1) For co-polarized transmissions in the plane tangent to the GSO arc:

$21-25\log_{10}\theta$	dBW/4 kHz	for $1.5^\circ \leq \theta \leq 7^\circ$.
0	dBW/4 kHz	for $7^\circ < \theta \leq 9.2^\circ$.
$24-25\log_{10}\theta$	dBW/4 kHz	for $9.2^\circ < \theta \leq 19.1^\circ$.
−8	dBW/4 kHz	for $19.1^\circ < \theta \leq 180^\circ$.

Where θ is as defined in paragraph (c)(1) of this section. The EIRP density levels specified for $\theta > 7^\circ$ may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(2) For co-polarized transmissions in the plane perpendicular to the GSO arc:

$24-25\log_{10}\theta$	dBW/4 kHz	for $3^\circ \leq \theta \leq 19.1^\circ$.
−8	dBW/4 kHz	for $19.1^\circ < \theta \leq 180^\circ$.

Where θ is as defined in paragraph (c)(1) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(3) For cross-polarized transmissions in the plane tangent to the GSO arc and in the plane perpendicular to the GSO arc:

$11-25\log_{10}\theta$	dBW/4 kHz	for $1.5^\circ \leq \theta \leq 7^\circ$.

Where θ is as defined in paragraph (c)(1) of this section.

(f) *Digital earth station operation in the conventional Ku-band.*

(1) For co-polarized transmissions in the plane tangent to the GSO arc:

$15-25\log_{10}\theta$	dBW/4 kHz	for $1.5^\circ \leq \theta \leq 7^\circ$.
−6	dBW/4 kHz	for $7^\circ < \theta \leq 9.2^\circ$.
$18-25\log_{10}\theta$	dBW/4 kHz	for $9.2^\circ < \theta \leq 19.1^\circ$.
−14	dBW/4 kHz	for $19.1^\circ < \theta \leq 180^\circ$.

Where θ is as defined in paragraph (c)(1) of this section. The EIRP density levels specified for $\theta > 7^\circ$ may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(2) For co-polarized transmissions in the plane perpendicular to the GSO arc:

$18-25\log_{10}\theta$	dBW/4 kHz	for $3^\circ \leq \theta \leq 19.1^\circ$.
−14	dBW/4 kHz	for $19.1^\circ < \theta \leq 180^\circ$.

Where θ is as defined in paragraph (c)(1) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(3) For cross-polarized transmissions in the plane tangent to the GSO arc and in the plane perpendicular to the GSO arc:

$5-25\log_{10}\theta$	dBW/4 kHz	for $1.5^\circ \leq \theta \leq 7^\circ$.

Where θ is as defined in paragraph (c)(1) of this section.

(4) A license application for earth station operation in a network using variable power density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite receiving beam may be routinely processed if the applicant certifies that the aggregate off-axis EIRP density from all co-frequency earth stations transmitting simultaneously to the same target satellite receiving beam, not resulting from colliding data bursts transmitted pursuant to a contention protocol, will not exceed the off-axis EIRP density limits permissible for a single earth station, as specified in paragraphs (f)(1) through -(f)(3) of this section.

(g) *Analog earth station operation in the extended Ku-band.*

(1) For co-polarized transmissions in the plane tangent to the GSO arc:

$21-25\log_{10}\theta$	dBW/4 kHz	for $1.5^\circ \le \theta \le 7^\circ$.
0	dBW/4 kHz	for $7^\circ < \theta \le 9.2^\circ$.
$24-25\log_{10}\theta$	dBW/4 kHz	for $9.2^\circ < \theta \le 48^\circ$.
−18	dBW/4 kHz	for $48^\circ < \theta \le 180^\circ$.

Where θ is as defined in paragraph (c)(1) of this section, and N is as defined in paragraph (d)(1) of this section. The EIRP density levels specified for $\theta > 7^\circ$ may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(2) For co-polarized transmissions in the plane perpendicular to the GSO arc:

$24-25\log_{10}\theta$	dBW/4 kHz	for $3^\circ \le \theta \le 48^\circ$.
−18	dBW/4 kHz	for $48^\circ < \theta \le 180^\circ$.

Where θ is as defined in paragraph (c)(1) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(3) For cross-polarized transmissions in the plane tangent to the GSO arc and in the plane perpendicular to the GSO arc:

$11-25\log_{10}\theta$	dBW/4 kHz	for $1.5^\circ \le \theta \le 7^\circ$.

Where θ is as defined in paragraph (c)(1) of this section.

(h) *Digital earth station operation in the extended Ku-band.*

(1) For co-polarized transmissions in the plane tangent to the GSO arc:

$15-25\log_{10}\theta$	dBW/4 kHz	for $1.5^\circ \le \theta \le 7^\circ$.
−6	dBW/4 kHz	for $7^\circ < \theta \le 9.2^\circ$.
$18-25\log_{10}\theta$	dBW/4 kHz	for $9.2^\circ < \theta \le 48^\circ$.
−24	dBW/4 kHz	for $48^\circ < \theta \le 180^\circ$.

Where θ is as defined in paragraph (c)(1) of this section. The EIRP density levels specified for $\theta > 7^\circ$ may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(2) For co-polarized transmissions in the plane perpendicular to the GSO arc:

$18-25\log_{10}\theta$	dBW/4 kHz	for $3^\circ \le \theta \le 48^\circ$.
−24	dBW/4 kHz	for $48^\circ < \theta \le 85^\circ$.

Where θ is as defined in paragraph (c)(1) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(3) For cross-polarized transmissions in the plane tangent to the GSO arc and in the plane perpendicular to the GSO arc:

$5-25\log_{10}\theta$	dBW/4 kHz	for $1.5^\circ \le \theta \le 7^\circ$.

Where θ is as defined in paragraph (c)(1) of this section.

(4) A license application for earth station operation in a network using variable power density control of earth stations transmitting simultaneously in shared frequencies to the same target satellite receiving beam may be routinely processed if the applicant certifies that the aggregate off-axis EIRP density from all co-frequency earth stations transmitting simultaneously to the same target satellite receiving beam, not resulting from colliding data bursts transmitted pursuant to a contention protocol, will not exceed the off-axis EIRP density limits permissible for a single earth station, as specified in paragraphs (h)(1) through (h)(3) of this section.

(i) Applications for authority for fixed earth station operation in the 5925–6425 MHz or 14.0–14.5 GHz band that do not qualify for routine processing under relevant criteria in this section, §§ 25.211 or 25.212 are subject to the requirements in § 25.220.

■ 48. In § 25.220, revise the section heading and paragraphs (a) and (b), remove and reserve paragraph (d)(1)(i), and revise paragraph (d)(2) to read as follows:

§ 25.220 Non-routine transmit/receive earth station operations.

(a) The requirements in this section apply to applications for, and operation of, earth stations transmitting in the conventional or extended C-bands, the conventional or extended Ku-bands, or the conventional Ka-band that do not qualify for routine licensing under relevant criteria in §§ 25.138, 25.211, 25.212, 25.218, 25.221(a)(1) or (a)(3), 25.222(a)(1) or (a)(3), 25.226(a)(1) or (a)(3), or 25.227(a)(1) or (a)(3).

(b) Applications filed pursuant to this section must include the information required by § 25.115(g)(1).

* * * * *

(d)(1) * * *

(i) [Reserved]

* * * * *

(2) Unless the non-routine uplink transmission levels are permitted under a coordination agreement with the space station operator, or unless coordination with the operator is not required pursuant to § 25.140(d)(3) or (d)(4), the operator of an earth station licensed pursuant to this section must reduce its transmitted EIRP density to levels at or within relevant routine limits:

(i) Toward the part of the geostationary orbit arc within one degree of a subsequently launched, two-degree-compliant space station receiving in the same uplink band at an orbital location within six degrees of the earth station's target satellite, and

(ii) Toward a two-degree-compliant space station receiving in the same uplink band at an orbital location more than six degrees away from the target satellite if co-frequency reception by the space station is adversely affected by the non-routine earth station transmission levels.

* * * * *

■ 49. In § 25.221, revise the section heading, paragraphs (a)(1)(i), (a)(2), (a)(3), (b) introductory text, and (b)(1) introductory text, remove and reserve paragraphs (b)(1)(i) and (ii), and revise paragraphs (b)(2) and (3) to read as follows:

§ 25.221 Blanket licensing provisions for ESVs operating with GSO FSS space stations in the 3700–4200 MHz and 5925–6425 MHz bands.

(a) * * *

(1) * * *

(i) * * *

(A) Off-axis EIRP spectral density emitted in the plane tangent to the GSO arc, as defined in § 25.103, shall not exceed the following values:

$26.3-25\log\theta$	dBW/4 kHz	for $1.5° \le \theta \le 7°$.
5.3	dBW/4 kHz	for $7° < \theta \le 9.2°$.
$29.3-25\log\theta$	dBW/4 kHz	for $9.2° < \theta \le 48°$.
-12.7	dBW/4 kHz	for $48° < \theta \le 180°$.

Where theta (θ) is the angle in degrees from a line from the earth station antenna to the assigned orbital location of the target satellite. The EIRP density levels specified for $\theta > 7°$ may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(B) In the plane perpendicular to the GSO arc, as defined in § 25.103, EIRP spectral density of co-polarized signals shall not exceed the following values:

$29.3-25\log\theta$	dBW/4 kHz	for $3.0° \le \theta \le 48°$.
-12.7	dBW/4 kHz	for $48° < \theta \le 180°$.

Where θ is as defined in paragraph (a)(1)(i)(A) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(C) The off-axis EIRP spectral-density of cross-polarized signals shall not exceed the following values in the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc:

$16.3-25\log\theta$	dBW/4 kHz	for $1.8° \le \theta \le 7.0°$.

Where θ is as defined in paragraph (a)(1)(i)(A) of this section.

* * * * *

(2) The following requirements apply to ESV systems that operate with off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section under licenses granted based on certifications filed pursuant to paragraph (b)(2) of this section.

(i) An ESV or ESV system licensed based on certifications filed pursuant to paragraph (b)(2) of this section must operate in accordance with the off-axis EIRP density specifications provided to the target satellite operator in order to obtain the certifications.

(ii) Any ESV transmitter operating under a license granted based on certifications filed pursuant to paragraph (b)(2) of this section must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP-density in excess of the specifications supplied to the target satellite operator.

(iii) A system with variable power control of individual ESV transmitters must monitor the aggregate off-axis EIRP density from simultaneously transmitting ESV transmitters at the system's network control and monitoring center. If simultaneous operation of two or more ESV transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP-density specifications supplied to the target satellite operator, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications, and the transmitters must comply within 100 milliseconds of receiving the command.

(3) The following requirements apply to an ESV system that uses variable power control of individual earth stations transmitting simultaneously in the same frequencies to the same target satellite, unless the ESV system operates pursuant to paragraph (a)(2) of this section.

(i) Aggregate EIRP density from co-frequency earth stations in each target satellite receiving beam, not resulting from colliding data bursts transmitted pursuant to a contention protocol, will not exceed the limits defined in paragraph (a)(1)(i) of this section.

(ii) Each ESV transmitter must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density in excess of the limit in paragraph (a)(3)(i) of this section.

(iii) Aggregate power density from simultaneously transmitting ESV transmitters must be monitored at the system's network control and monitoring center. If simultaneous operation of two or more ESV transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit, and those transmitters must comply within 100 milliseconds of receiving the command.

* * * * *

(b) Applications for ESV operation in the 5925–6425 MHz (Earth-to-space) band to GSO satellites in the FSS must include, in addition to the particulars of operation identified on FCC Form 312, and associated Schedule B, applicable technical demonstrations or certifications pursuant to paragraph (b)(1), (b)(2), or (b)(3) of this section and the documentation identified in paragraphs (b)(4) through (b)(6) of this section.

(1) An ESV applicant proposing to implement a transmitter under paragraph (a)(1) of this section must provide the information required by § 25.115(g)(1). An applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(A) of this section must also provide the certifications identified in paragraph (b)(1)(iii) of this section. An ESV applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(B) of this section must also provide the demonstrations identified in paragraph (b)(1)(iv) of this section.

(i)–(ii) [Reserved]

* * * * *

(2) An applicant proposing to operate with off-axis EIRP density in excess of the levels specified in paragraph (a)(1)(i) or (a)(3)(i) of this section must provide the following in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1):

(ii) The certifications required by § 25.220(d);

(iii) A detailed showing that each ESV transmitter in the system will automatically cease or reduce emissions within 100 milliseconds after generating EIRP density exceeding specifications provided to the target satellite operator;

(iv) A detailed showing that the aggregate power density from simultaneously transmitting ESV transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more ESV transmitters causes the aggregate off-axis EIRP density to exceed the off-axis EIRP density specifications supplied to the target satellite operator, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications; and that those transmitters will comply within 100 milliseconds of receiving the command; and

(v) A certification that the ESV system will operate in compliance with the power limits in § 25.204(h).

(3) An applicant proposing to implement an ESV system subject to paragraph (a)(3) of this section must provide the following information in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) A detailed showing of the measures that will be employed to maintain aggregate EIRP density at or below the limit in paragraph (a)(3)(i) of this section;

(iii) A detailed showing that each ESV terminal will automatically cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density exceeding the limit in paragraph (a)(3)(i) of this section;

(iv) A detailed showing that the aggregate power density from simultaneously transmitting ESV transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more ESV transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit; and that those transmitters will comply within 100 milliseconds of receiving the command; and

(v) Certification that the ESV system will operate in compliance with the power limits in § 25.204(h).

* * * * *

■ 50. In § 25.222, revise the section heading, paragraphs (a)(1)(i), (a)(2), and (a)(3), revise paragraph (b) introductory text and paragraph (b)(1) introductory text, remove and reserve paragraphs (b)(1)(i) and (ii), and revise paragraphs (b)(2) and (3) to read as follows:

§ 25.222 Blanket licensing provisions for ESVs operating with GSO FSS space stations in the 10.95–11.2 GHz, 11.45–11.7 GHz, 11.7–12.2 GHz, and 14.0–14.5 GHz bands.

(a) * * *

(1) * * *

(i) * * *

(A) Off-axis EIRP spectral density emitted in the plane tangent to the GSO arc, as defined in § 25.103, shall not exceed the following values:

$15-25\log\theta$	dBW/4 kHz	for $1.5° \leq \theta \leq 7°$.
-6	dBW/4 kHz	for $7° < \theta \leq 9.2°$.
$18-25\log\theta$	dBW/4 kHz	for $9.2° < \theta \leq 19.1°$.
-14	dBW/4kHz	for $19.1° < \theta \leq 180°$.

Where theta (θ) is the angle in degrees from a line from the earth station antenna to the assigned orbital location of the target satellite. The EIRP density levels specified for $\theta > 7°$ may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(B) The off-axis EIRP density of co-polarized signals shall not exceed the following values in the plane perpendicular to the GSO arc, as defined in § 25.103:

$18-25\log\theta$	dBW/4 kHz	for $3.0° \leq \theta \leq 19.1°$.
-14	dBW/4kHz	for $19.1° < \theta \leq 180°$.

Where θ is as defined in paragraph (a)(1)(i)(A) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(C) The off-axis EIRP density of cross-polarized signals shall not exceed the following values in the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc:

5–25logθ	dBW/4 kHz	for 1.8° ≤ θ ≤ 7.0°.

Where θ is as defined in paragraph (a)(1)(i)(A) of this section.

* * * * *

(2) The following requirements apply to ESV systems that operate with off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section under licenses granted based on certifications filed pursuant to paragraph (b)(2) of this section.

(i) An ESV or ESV system licensed based on certifications filed pursuant to paragraph (b)(2) of this section must operate in accordance with the off-axis EIRP density specifications provided to the target satellite operator in order to obtain the certifications.

(ii) Any ESV transmitter operating under a license granted based on certifications filed pursuant to paragraph (b)(2) of this section must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP-density in excess of the specifications supplied to the target satellite operator.

(iii) A system with variable power control of individual ESV transmitters must monitor the aggregate off-axis EIRP density from simultaneously transmitting ESV transmitters at the system's network control and monitoring center. If simultaneous operation of two or more ESV transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP-density specifications supplied to the target satellite operator, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications, and the transmitters must comply within 100 milliseconds of receiving the command.

(3) The following requirements apply to an ESV system that uses variable power control of individual earth stations transmitting simultaneously in the same frequencies to the same target satellite, unless the ESV system operates pursuant to paragraph (a)(2) of this section.

(i) Aggregate EIRP density from co-frequency earth stations in each target satellite receiving beam, not resulting from colliding data bursts transmitted pursuant to a contention protocol, will not exceed the limits defined in paragraph (a)(1)(i) of this section.

(ii) Each ESV transmitter must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density in excess of the limit in paragraph (a)(3)(i) of this section.

(iii) Aggregate power density from simultaneously transmitting ESV transmitters must be monitored at the system's network control and monitoring center. If simultaneous operation of two or more ESV transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit, and those transmitters must comply within 100 milliseconds of receiving the command.

* * * * *

(b) Applications for ESV operation in the 14.0–14.5 GHz (Earth-to-space) band to GSO satellites in the FSS must include, in addition to the particulars of operation identified on FCC Form 312, and associated Schedule B, applicable technical demonstrations or certifications pursuant to paragraph (b)(1), (b)(2), or (b)(3) of this section and the documentation identified in paragraphs (b)(4) through (6) of this section.

(1) An ESV applicant proposing to implement a transmitter under paragraph (a)(1) of this section must provide the information required by § 25.115(g)(1). An applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(A) of this section must also provide the certifications identified in paragraph (b)(1)(iii) of this section. An ESV applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(B) of this section must also provide the demonstrations identified in paragraph (b)(1)(iv) of this section.

(i)–(ii) [Reserved]

* * * * *

(2) An applicant proposing to operate with off-axis EIRP density in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section must provide the following in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) The certifications required by § 25.220(d);

(iii) A detailed showing that each ESV transmitter in the system will automatically cease or reduce emissions within 100 milliseconds after generating EIRP density exceeding specifications provided to the target satellite operator; and

(iv) A detailed showing that the aggregate power density from simultaneously transmitting ESV transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more ESV transmitters causes the aggregate off-axis EIRP density to exceed the off-axis EIRP density specifications supplied to the target satellite operator, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications; and that those transmitters will comply within 100 milliseconds of receiving the command.

(3) An applicant proposing to implement an ESV system subject to paragraph (a)(3) of this section must provide the following information in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) A detailed showing of the measures that will be employed to maintain aggregate EIRP density at or below the limit in paragraph (a)(3)(i) of this section;

(iii) a detailed showing that each ESV terminal will automatically cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density exceeding the limit in paragraph (a)(3)(i) of this section; and

(iv) A detailed showing that the aggregate power density from simultaneously transmitting ESV transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more ESV transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit; and that those transmitters will comply within 100 milliseconds of receiving the command.

* * * * *

■ 51. In § 25.223, revise paragraphs (b), (c), and (d) to read as follows:

§ 25.223 Alternative licensing rules for feeder-link earth stations in the 17/24 GHz BSS.

* * * * *

(b) Applications for earth station licenses in the 24.75–25.25 GHz portion of 17/24 GHz BSS may be routinely processed if they meet the following requirements:

(1) The EIRP density of co-polarized signals will not exceed the following values in the plane tangent to the GSO arc, as defined in § 25.103, under clear sky conditions:

$32.5-25\log(\theta)$	dBW/MHz	for $2° \le \theta \le 7°$.
11.4	dBW/MHz	for $7° \le \theta \le 9.2°$.
$35.5-25\log(\theta)$	dBW/MHz	for $9.2° \le \theta \le 19.1°$.
3.5	dBW/MHz	for $19.1° \le \theta \le 180°$.

Where θ is the angle in degrees from a line from the earth station antenna to the assigned orbital location of the target satellite.

(2) The EIRP density of co-polarized signals will not exceed the following values under clear sky conditions in the plane perpendicular to the GSO arc, as defined in § 25.103:

$35.5-25\log(\theta)$	dBW/MHz	for $2° \le \theta \le 7°$.
14.4	dBW/MHz	for $7° \le \theta \le 9.2°$.
$38.5-25\log(\theta)$	dBW/MHz	for $9.2° \le \theta \le 19.1°$.
6.5	dBW/MHz	for $19.1° \le \theta \le 180°$.

Where θ is as defined in paragraph (b)(1) of this section.

(3) The EIRP density levels specified in paragraphs (a)(1) and (2) of this section may be exceeded by up to 3 dB for values of $\theta > 7°$, in 10% of the range of theta (θ) angles from 7°–180° on each side of the line from the earth station to the target satellite.

(4) The EIRP density of cross-polarized signals will not exceed the following values in the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc, under clear sky conditions:

$22.5-25\log(\theta)$	dBW/MHz	for $2° \le \theta \le 7°$.

Where θ is as defined in paragraph (b)(1) of this section.

(c) An applicant proposing levels in excess of those specified in paragraph (b) of this section must certify that potentially affected parties acknowledge and do not object to the use of the applicant's higher EIRP densities.

(1) For proposed non-conforming EIRP density levels up to 3 dB in excess of the limits defined in paragraph (b) of this section, potentially affected parties are operators of co-frequency U.S.-authorized 17/24 GHz BSS space stations at angular separations of up to ±6° from the proposed satellite points of communication. For proposed EIRP density levels more than 3 dB but not more than 6 dB in excess of the limits defined in paragraph (b) of this section, potentially affected parties are operators of co-frequency U.S.-authorized space stations up to ±10° from the proposed satellite points of communication.

(2) Notwithstanding paragraph (c)(1) of this section, an applicant need not certify that the operator of a co-frequency space station consents to proposed non-conforming operation if EIRP density from the proposed earth station will not exceed the levels specified in paragraph (b) toward any position in the geostationary arc within one degree of the assigned orbital location of the co-frequency space station.

(3) Power density levels more than 6 dB in excess of the limits defined in paragraph (b) of this section will not be permitted.

(d)(1) The operator of an earth station licensed pursuant to paragraph (c) of this section will bear the burden of coordinating with the operator of a co-frequency space station subsequently licensed by the Commission for operation at an orbital location 10° or less from the earth station's target satellite if the co-frequency space station's reception of conforming uplink transmissions is, or would be, adversely affected by the earth station's non-conforming operation. If no agreement is reached, the earth station operator must reduce EIRP density toward that co-frequency space station to a level in conformance with the envelopes specified in paragraph (b) of this section.

(2) The operator of an earth station licensed pursuant to paragraph (c)(1) or (c)(2) of this section must reduce EIRP density to levels at or within those specified in paragraph (b) toward a U.S.-licensed space station receiving in the same uplink band at an angular separation from the earth station's target satellite greater than is required in paragraph (c)(1) of this section, if the co-frequency space station's reception of conforming uplink transmissions is adversely affected by the non-conforming earth station operation, unless the non-conforming operation is permitted under a coordination agreement with the operator of the co-frequency space station.

■ 52. In § 25.226, revise the section heading, paragraphs (a)(1)(i), (a)(2), and (a)(3), (b) introductory text, and (b)(1) introductory text, remove and reserve paragraphs (b)(1)(i) and (ii), and revise paragraphs (b)(2) and (b)(3) to read as follows:

§ 25.226 Blanket licensing provisions for domestic, U.S. VMESs operating with GSO FSS space stations in the 10.95–11.2 GHz, 11.45–11.7 GHz, 11.7–12.2 GHz, and 14.0–14.5 GHz bands.

(a) * * *

(1) * * *

(i) * * *

(A) Off-axis EIRP spectral density emitted in the plane tangent to the GSO arc, as defined in § 25.103, shall not exceed the following values:

$15-25\log\theta$	dBW/4 kHz	for $1.5° \le \theta \le 7°$.
-6	dBW/4 kHz	for $7° < \theta \le 9.2°$.

$18-25\log\theta$	dBW/4 kHz	for $9.2^\circ < \theta \leq 19.1^\circ$.
-14	dBW/4 kHz	for $19.1^\circ < \theta \leq 180^\circ$.

Where theta (θ) is the angle in degrees from a line from the earth station antenna to the assigned orbital location of the target satellite. The EIRP density levels specified for $\theta > 7^\circ$ may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(B) The off-axis EIRP spectral density of co-polarized signals shall not exceed the following values in the plane perpendicular to the GSO arc, as defined in § 25.103:

$18-25\log\theta$	dBW/4 kHz	for $3.0^\circ \leq \theta \leq 19.1^\circ$.
-14	dBW/4 kHz	for $19.1^\circ < \theta \leq 180^\circ$.

Where θ is as defined in paragraph (a)(1)(i)(A) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(C) The EIRP density of cross-polarized signals shall not exceed the following values in the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc:

$5-25\log\theta$	dBW/4 kHz	for $1.8^\circ \leq \theta \leq 7.0^\circ$.

Where θ is as defined in paragraph (a)(1)(i)(A) of this section.

* * * * *

(2) The following requirements apply to VMES systems that operate with off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section under licenses granted based on certifications filed pursuant to paragraph (b)(2) of this section.

(i) A VMES or VMES system licensed based on certifications filed pursuant to paragraph (b)(2) of this section must operate in accordance with the off-axis EIRP density specifications provided to the target satellite operator in order to obtain the certifications.

(ii) Any VMES transmitter operating under a license granted based on certifications filed pursuant to paragraph (b)(2) of this section must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP-density in excess of the specifications supplied to the target satellite operator.

(iii) A system with variable power control of individual VMES transmitters must monitor the aggregate off-axis EIRP density from simultaneously transmitting VMES transmitters at the system's network control and monitoring center. If simultaneous operation of two or more VMES transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density specifications supplied to the target satellite operator, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications and the transmitters must comply within 100 milliseconds of receiving the command.

(3) The following requirements apply to a VMES system that uses variable power control of individual VMES earth stations transmitting simultaneously in the same frequencies to the same target satellite, unless the system operates pursuant to paragraph (a)(2) of this section.

(i) Aggregate EIRP density from co-frequency earth stations in each target satellite receiving beam, not resulting from colliding data bursts transmitted pursuant to a contention protocol, will not exceed the limits defined in paragraph (a)(1)(i) of this section.

(ii) Each VMES transmitter must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density in excess of the limit in paragraph (a)(3)(i) of this section.

(iii) Aggregate power density from simultaneously transmitting VMES transmitters must be monitored at the system's network control and monitoring center. If simultaneous operation of two or more transmitters in a VMES network causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit, and those transmitters must comply within 100 milliseconds of receiving the command.

* * * * *

(b) Applications for VMES operation in the 14.0–14.5 GHz (Earth-to-space) band to GSO satellites in the FSS must include, in addition to the particulars of operation identified on FCC Form 312, and associated Schedule B, applicable technical demonstrations pursuant to paragraph (b)(1), (b)(2), or (b)(3) of this section and the documentation identified in paragraphs (b)(4) through (b)(8) of this section.

(1) A VMES applicant proposing to implement a transmitter under paragraph (a)(1) of this section must provide the information required by § 25.115(g)(1). An applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(A) of this section must also provide the certifications identified in paragraph (b)(1)(iii) of this section. An applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(B) of this section must also provide the demonstrations identified in paragraph (b)(1)(iv) of this section.

(i)–(ii) [Reserved]

* * * * *

(2) An applicant proposing to operate with off-axis EIRP density in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section must provide the following in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) The certifications required by § 25.220(d);

(iii) A detailed showing that each VMES transmitter in the system will automatically cease or reduce emissions within 100 milliseconds after generating EIRP density exceeding specifications provided to the target satellite operator; and

(iv) A detailed showing that the aggregate power density from simultaneously transmitting VMES transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more VMES transmitters causes the aggregate off-axis EIRP density to exceed the off-axis EIRP density specifications supplied to the target satellite operator, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications; and that those transmitters will comply within 100 milliseconds of receiving the command.

(3) An applicant proposing to implement a VMES system subject to paragraph (a)(3) of this section must provide the following information in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) A detailed showing of the measures that will be employed to maintain aggregate EIRP density at or below the limit in paragraph (a)(3)(i) of this section;

(iii) A detailed showing that each VMES terminal will automatically cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density exceeding the limit in paragraph (a)(3)(i) of this section; and

(iv) A detailed showing that the aggregate power density from simultaneously transmitting ESV transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more transmitters in the VMES network causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit; and that those transmitters will comply within 100 milliseconds of receiving the command.

* * * * *

■ 53. In § 25.227, revise the section heading, paragraphs (a)(1)(i), (a)(2), (a)(3), (b) introductory text, and (b)(1) introductory text, remove and reserve paragraphs (b)(1)(i) and (ii), and revise paragraphs (b)(2) and (b)(3) to read as follows:

§ 25.227 Blanket licensing provisions for ESAAs operating with GSO FSS space stations in the 10.95–11.2 GHz, 11.45–11.7 GHz, 11.7–12.2 GHz, and 14.0–14.5 GHz bands.

(a) * * *

(1) * * *

(i) * * *

(A) EIRP spectral density emitted in the plane tangent to the GSO arc, as defined in § 25.103, must not exceed the following values:

$15-25\log_{10}\theta$	dBW/4 kHz	for $1.5° \leq \theta \leq 7°$.
-6	dBW/4 kHz	for $7° < \theta \leq 9.2°$.
$18-25\log_{10}\theta$	dBW/4 kHz	for $9.2° < \theta \leq 19.1°$.
-14	dBW/4 kHz	for $19.1° < \theta \leq 180°$.

Where theta (θ) is the angle in degrees from a line from the earth station antenna to the assigned orbital location of the target satellite. The EIRP density levels specified for θ > 7° may be exceeded by up to 3 dB in up to 10% of the range of theta (θ) angles from ±7–180°, and by up to 6 dB in the region of main reflector spillover energy.

(B) The EIRP spectral density of co-polarized signals must not exceed the following values in the plane perpendicular to the GSO arc, as defined in § 25.103:

$18-25\log\theta$	dBW/4 kHz	for $3.0° \leq \theta \leq 19.1°$.
-14	dBW/4 kHz	for $19.1° < \theta \leq 180°$.

Where θ is as defined in paragraph (a)(1)(i)(A) of this section. These EIRP density levels may be exceeded by up to 6 dB in the region of main reflector spillover energy and in up to 10% of the range of θ angles not included in that region, on each side of the line from the earth station to the target satellite.

(C) The off-axis EIRP spectral-density of cross-polarized signals must not exceed the following values in the plane tangent to the GSO arc or in the plane perpendicular to the GSO arc:

$5-25\log_{10}\theta$	dBW/4 kHz	for $1.8° < \theta \leq 7°$.

Where θ is as defined in paragraph (a)(1)(i)(A) of this section.

* * * * *

(2) The following requirements apply to ESAA systems that operate with off-axis EIRP spectral-densities in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section under licenses granted based on certifications filed pursuant to paragraph (b)(2) of this section.

(i) An ESAA or ESAA system licensed based on certifications filed pursuant to paragraph (b)(2) of this section must operate in accordance with the off-axis EIRP density specifications provided to the target satellite operator in order to obtain the certifications.

(ii) Any ESAA transmitter operating under a license granted based on certifications filed pursuant to paragraph (b)(2) of this section must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP-density in excess of the specifications supplied to the target satellite operator.

(iii) A system with variable power control of individual ESAA transmitters must monitor the aggregate off-axis EIRP density from simultaneously transmitting ESAA transmitters at the system's network control and monitoring center. If simultaneous operation of two or more ESAA transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density specifications supplied to the target satellite operator, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications, and the transmitters must comply within 100 milliseconds of receiving the command.

(3) The following requirements apply to an ESAA system that uses variable power-density control of individual ESAA earth stations transmitting simultaneously in the same frequencies

to the same target satellite, unless the system operates pursuant to paragraph (a)(2) of this section.

(i) Aggregate EIRP density from co-frequency earth stations in each target satellite receiving beam, not resulting from colliding data bursts transmitted pursuant to a contention protocol, will not exceed the limits specified in paragraph (a)(1)(i) of this section.

(ii) Each ESAA transmitter must be self-monitoring and capable of shutting itself off and must cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density in excess of the limit in paragraph (a)(3)(i) of this section.

(iii) A system with variable power control of individual ESAA transmitters must monitor aggregate power density from simultaneously transmitting ESAA transmitters at the network control and monitoring center. If simultaneous operation of two or more transmitters causes aggregate off-axis EIRP density to exceed the off-axis EIRP density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center must command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit, and those transmitters must comply within 100 milliseconds of receiving the command.

* * * * *

(b) Applications for ESAA operation in the 14.0–14.5 GHz (Earth-to-space) band to GSO satellites in the FSS shall include, in addition to the particulars of operation identified on FCC Form 312, and associated Schedule B, the applicable technical demonstrations in paragraphs (b)(1), (b)(2), or (b)(3), and the documentation identified in paragraphs (b)(4) through (b)(8) of this section.

(1) An ESAA applicant proposing to implement a transmitter under paragraph (a)(1) of this section must provide the information required by § 25.115(g)(1). An applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(A) of this section must also provide the certifications identified in paragraph (b)(1)(iii) of this section. An applicant proposing to implement a transmitter under paragraph (a)(1)(ii)(B) of this section must also provide the demonstrations identified in paragraph (b)(1)(iv) of this section.

(i)–(ii) [Reserved]

* * * * *

(2) An ESAA applicant proposing to operate with off-axis EIRP density in excess of the levels in paragraph (a)(1)(i) or (a)(3)(i) of this section must provide the following in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) The certifications required by § 25.220(d); and

(iii) A detailed showing that each ESAA transmitter in the system will automatically cease or reduce emissions within 100 milliseconds after generating EIRP density exceeding specifications provided to the target satellite operator; and

(iv) A detailed showing that the aggregate power density from simultaneously transmitting ESAA transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more ESAA transmitters causes the aggregate off-axis EIRP density to exceed the off-axis EIRP density specifications supplied to the target satellite operator, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below those specifications; and that those transmitters will comply within 100 milliseconds of receiving the command.

(3) An applicant proposing to implement an ESAA system subject to paragraph (a)(3) of this section must provide the following information in exhibits to its earth station application:

(i) Off-axis EIRP density data pursuant to § 25.115(g)(1);

(ii) A detailed showing of the measures that will be employed to maintain aggregate EIRP density at or below the limit in paragraph (a)(3)(i) of this section;

(iii) A detailed showing that each ESAA terminal will automatically cease or reduce emissions within 100 milliseconds after generating off-axis EIRP density exceeding the limit in paragraph (a)(3)(i) of this section; and

(iv) A detailed showing that the aggregate power density from simultaneously transmitting ESAA transmitters will be monitored at the system's network control and monitoring center; that if simultaneous operation of two or more transmitters in the ESAA network causes aggregate off-axis EIRP density to exceed the off-axis density limit in paragraph (a)(3)(i) of this section, the network control and monitoring center will command those transmitters to cease emissions or reduce the aggregate EIRP density to a level at or below that limit; and that those transmitters will comply within 100 milliseconds of receiving the command.

* * * * *

■ 54. In § 25.257, revise the section heading and the second sentence in paragraph (e) to read as follows:

§ 25.257 Special requirements for NGSO MSS operations in the 29.1–29.25 GHz band regarding LMDS.

* * * * *

(e) * * * In this regard, any single NGSO MSS operator may identify only one feeder-link earth station complex protection zone in each category identified in § 101.147(y)(2) of this chapter until the other NGSO MSS operator has been given an opportunity to select a location from the same category.

■ 55. In § 25.258, revise the section heading and the first sentence in paragraph (b) to read as follows:

§ 25.258 Sharing between NGSO MSS feeder-link stations and GSO FSS services in the 29.25–29.5 GHz band.

* * * * *

(b) Licensed GSO FSS earth stations in the vicinity of operational NGSO MSS feeder-link earth station complexes must, to the maximum extent possible, operate with frequency/polarization selections that will minimize unacceptable interference with reception of GSO FSS and NGSO MSS uplink transmissions in the 29.25–29.5 GHz band. * * *

* * * * *

§ 25.264 [Amended]

■ 56. Amend § 25.264 as follows:
■ a. Revise the section heading;
■ b. Revise paragraph (a) introductory text and paragraph (a)(5);
■ c. Add paragraph (a)(6);
■ d. Revise paragraph (b) introductory text;
■ e. Revise the second sentence in paragraph (b)(1), paragraph (b)(2)(ii), the first sentence in paragraph (b)(3);
■ f. Revise the first sentence in paragraph (c);
■ g. Revise (d) introductory text, and the first two sentences in paragraph (d)(1)(ii); and
■ h. Add paragraph (b)(4).

§ 25.264 Requirements to facilitate reverse-band operation in the 17.3–17.8 GHz band of 17/24 GHz BSS and DBS Service space stations.

(a) Each 17/24 GHz BSS space station applicant or licensee must submit a series of tables or graphs containing predicted off-axis gain data for each antenna that will transmit in the 17.3–17.8 GHz frequency band, in accordance with the following specifications. Using a Cartesian coordinate system wherein the X axis is tangent to the geostationary orbital arc with the positive direction pointing east, *i.e.,* in the direction of travel of the satellite; the Y axis is parallel to a line passing through the geographic north and south poles of the Earth, with the positive direction pointing south; and the Z axis passes through the satellite and the center of the Earth, with the positive direction pointing toward the Earth, the applicant or licensee must provide the predicted transmitting antenna off-axis antenna gain information:

* * * * *

(5) Over a greater angular measurement range, if necessary, to account for any planned spacecraft orientation bias or change in operating orientation relative to the reference coordinate system. The applicant or licensee must state the reasons for including such additional information.

(6) The predictive gain information must be submitted to the Commission when a license application is filed for a 17/24 GHz BSS space station or within 60 days after completion of critical design review for the space station, whichever occurs later.

(b) A 17/24 GHz BSS space station applicant or licensee must submit power flux density (pfd) calculations based on the predicted gain data submitted in accordance with paragraph (a) of this section, as follows:

(1) * * * In this rule, the term prior-filed U.S. DBS space station refers to any co-frequency Direct Broadcast Satellite service space station for which an application was filed with the Commission, or an authorization was granted by the Commission, prior to the filing of the information and certifications required by paragraphs (a) and (b) of this section. * * *

(2) * * *

(ii) Indicate the extent to which the calculated pfd of the 17/24 GHz space station's transmissions in the 17.3–17.8 GHz band exceed the threshold pfd level of −117 dBW/m^2/100 kHz at those prior-filed U.S. DBS space station locations.

(3) If the calculated pfd exceeds the threshold level of −117 dBW/m^2/100 kHz at the location of any prior-filed U.S. DBS space station, the applicant or licensee must also provide with the pfd calculations a certification that all affected DBS operators acknowledge and do not object to such higher off-axis pfd levels. * * *

(4) The information and any certification required by paragraph (b) of this section must be submitted to the Commission when a license application is filed for a 17/24 GHz BSS space station or within 60 days after completion of critical design review for the space station, whichever occurs later. Otherwise, such information and certifications must be submitted to the Commission within 24 months after the grant of an operating license for a 17/24 GHz BSS space station or when the applicant or licensee certifies completion of critical design review, whichever occurs first.

(c) No later than 2 months prior to launch, each 17/24 GHz BSS space station licensee must update the predicted transmitting antenna off-axis gain information provided in accordance with paragraph (a) of this section by submitting measured transmitting antenna off-axis gain information over the angular ranges, measurement frequencies and polarizations specified in paragraphs (a)(1) through (5) of this section. * * *

(d) No later than 2 months prior to launch, or when applying for authority to change the location of a 17/24 GHz BSS space station that is already in orbit, each 17/24 GHz BSS space station licensee must provide pfd calculations based on the measured off-axis gain data submitted in accordance with paragraph (c) of this section, as follows:

(1) * * *

(ii) At the location of any subsequently filed U.S. DBS space station where the pfd level in the 17.3–17.8 GHz band calculated on the basis of measured gain data exceeds −117 dBW/m^2/100 kHz. In this rule, the term subsequently filed U.S. DBS space station refers to any co-frequency Direct Broadcast Satellite service space station proposed in a license application filed with the Commission after the 17/24 GHz BSS operator submitted the predicted data required by paragraphs (a) through (b) of this section but before submission of the measured data required by this paragraph. * * *

* * * * *

■ 57. In § 25.271, revise paragraph (c)(5) and add paragraph (g) to read as follows:

§ 25.271 Control of transmitting stations.

* * * * *

(c) * * *

(5) Operators of blanket-licensed GSO FSS earth station networks that provide international service must maintain a control point within the United States, or maintain a point of contact within the United States available 24 hours a day, 7 days a week, with the ability to shut off any earth station within the network immediately upon notification of harmful interference.

* * * * *

(g) Licensees of transmitting earth stations are prohibited from using remote earth stations in their networks that are not designed to stop transmission when synchronization to signals from the target satellite fails.

■ 58. In § 25.275, add paragraph (e) to read as follows:

§ 25.275 Particulars of operation.

* * * * *

(e) Transmission from an earth station of an unmodulated carrier at a power level sufficient to saturate a satellite transponder is prohibited, except as consented to by the space station licensee to determine transponder performance characteristics.

■ 59. In § 25.283, revise paragraph (c) to read as follows:

§ 25.283 End-of-life disposal.

* * * * *

(c) *All space stations.* Upon completion of any relocation authorized by paragraph (b) of this section, or any relocation at end-of-life specified in an authorization, or upon a spacecraft otherwise completing its authorized mission, a space station licensee shall ensure, unless prevented by technical failures beyond its control, that stored energy sources on board the satellite are discharged, by venting excess propellant, discharging batteries, relieving pressure vessels, or other appropriate measures.

* * * * *

■ 60. Add § 25.288 to read as follows:

§ 25.288 Obligation to remedy interference caused by NGSO MSS feeder downlinks in the 6700–6875 MHz band.

If an NGSO MSS satellite transmitting in the 6700–6875 MHz band causes harmful interference to previously licensed co-frequency Public Safety facilities, the satellite operator has an obligation to remedy the interference.

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